The courts endorse the Attorney Code of Conduct adopted by the San Diego County Bar Association and hereby encourage all attorneys practicing before them to comply with these guidelines. The Code states:

GENERAL

A) Lawyers must observe all rules of law, including the California Rules of Professional Conduct and the State Bar Act, particularly Business and Professions Code section 6068.

B) Lawyers should honor their commitments.

C) Lawyers should honor and maintain the integrity of our system of justice.

D) Lawyers should not compromise their integrity for the sake of a client, case or cause.

E) Lawyers should conduct themselves in a professional manner.

F) Lawyers should be guided by a fundamental sense of fair play in all professional dealings.

DUTIES OWED IN PROCEEDINGS BEFORE THE COURT

A) Lawyers should always be courteous and respectful to the court.

B) Lawyers should always be candid with the court.

C) Lawyers and clients appearing in court should dress neatly and appropriately.

D) Lawyers should be on time.

E) Lawyers should be prepared for all court appearances.

F) Lawyers should attempt to resolve, by agreement, their differences relating to procedural and discovery matters.

G) Lawyers should discourage and decline to participate in litigation that is without merit or is designed primarily to harass or drain the financial resources of the opposing party.

H) Lawyers should avoid any communication, direct or indirect, about a pending case with a judge except as permitted by court rules or otherwise authorized by law.

I) Lawyers should refrain from impugning the integrity of the judicial system, its proceedings, or its members.

DUTIES OWED TO MEMBERS OF THE BAR

A) Lawyers must remember that conflicts with opposing counsel are professional and not personal; vigorous advocacy is not inconsistent with professional courtesy.

B) Lawyers should treat adverse witnesses, litigants and opposing counsel with common courtesy, good manners, fairness, and due consideration.

C) Lawyers should not be influenced by ill feelings or anger between clients in their conduct, attitude or demeanor toward opposing counsel.

D) Lawyers should conduct themselves in discovery proceedings as they would if a judicial officer were present.

E) Lawyers should not use discovery to harass the opposition or for any improper purpose.

F) Lawyers should not intentionally make any misrepresentation to an opponent.

G) Lawyers should not arbitrarily or unreasonably withhold consent to a just and reasonable request for cooperation or accommodation.

H) Lawyers should not attribute to an opponent a position not clearly taken by the opponent.

I) Letters intended to make a record should be scrupulously accurate.

J) Lawyers should not propose stipulations in the presence of the trier of fact unless previously agreed to by the opponent.

K) Lawyers should avoid interrupting an opponent's legal argument unless there is a legitimate basis for an appropriate objection.

L) Lawyers in court should address opposing lawyers through the court.

M) Lawyers should not seek sanctions against another lawyer to obtain a tactical advantage or for any other improper purpose.

N) Lawyers should inspire and encourage opposing counsel to conform to the standards in this code and to amicably resolve related disputes promptly, fairly and reasonably, with resort to the court for judicial relief only if necessary.

O) Lawyers should conduct themselves so that they may conclude each case with a handshake with the opposing lawyer.

DIVISION I:
GENERAL AND
ADMINISTRATIVE RULES

CHAPTER 1
SCOPE OF RULES

These rules apply to all cases filed in or transferred to the courts of San Diego County.

Rule 1.1.1

Citation and Effect of Rules

These rules are known and cited as the "San Diego Superior Court Rules" and are at all times supplementary to and subject to statutes, the California Rules of Court, and any rules adopted by the Judicial Council and are to be construed and applied so they do not conflict with such rules and statutes. These rules have no retroactive effect or application.
(Adopted 1/1/1998; Rev. 1/1/2000; Rev. 1/1/2004; Renum. 1/1/2006)

Rule 1.1.2

Construction and Application of Rules

These rules will be construed to secure the efficient administration of the business of the court and to promote and facilitate the administration of justice by the court. Division, section, rule, and paragraph headings do not affect the scope, meaning, or intent of the provisions of these rules. If any part of a rule is held invalid, all valid parts that are severable from the invalid parts remain in effect. If a rule is held invalid in one or more of its applications, the rule remains in effect in all valid applications that are severable from the invalid applications.
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 1/1/2006)

Rule 1.1.3

Definition of Words

The definitions set forth in the California Rules of Court for the trial courts apply to these rules with equal force and for all purposes, unless the context or the subject matter requires otherwise.

"Answer" includes response.

"Case management conference" includes what was formerly referred to as "status conference."

"Complaint" includes cross-complaint and petition.

"County" means the County of San Diego, State of California.

"Court" means the Superior Court of the County of San Diego and includes any judge, commissioner, referee, and temporary judge currently serving on the bench of any division in the county.

"Day" means a calendar day, unless otherwise specified.

"Defendant" includes cross-defendant and respondent.

"Party," or other designation of a party, includes such party's attorney of record.

"Plaintiff" includes cross-complainant and petitioner.

"Rule" refers to a rule of the San Diego Superior Court, unless otherwise indicated.

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2000; Rev. 1/1/2004; Renum. 1/1/2006)

Rule 1.1.4

New, Amended, Repealed Rules

Any rule may be amended or repealed, and new rules may be added by majority vote of the judges of the San Diego Superior Court.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 1/1/2006)

CHAPTER 2
GENERAL RULES

Rule 1.2.1

Policy Against Bias

It is the policy of the court to provide an environment free of all types of bias, prejudice, any kind of discrimination, or unfair practice. All judges, commissioners, referees, court officers, and court attachés must perform their duties in a manner calculated to prevent any such conduct, either by court personnel or by those appearing in court in any capacity. This rule does not preclude legitimate comment or advocacy when race, gender, religion, national origin, disability, age, sexual orientation, social economy, or other similar factors are issues in court proceedings.

Any violation of this policy by any judge, commissioner, referee, court officer, or court attaché should be reported directly to the presiding judge or executive officer, or assistant executive officer of the division in which the alleged violation occurred. Any violation of this policy by persons appearing in court should be reported directly to the judicial officer before whom the proceedings were conducted.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 1.2.2

Departments, Divisions of the Court, and Venue

A. The court consists of all the departments and divisions wherever they may be located and whatever their function. These include all facilities located within the North County, East County, South County, and Central Divisions. The hours of operation are published in the professional and legal newspapers in the county and posted in each courthouse.

B. In addition to the trial departments of each division, there is a presiding or supervising department and other specialized departments as determined by the presiding judge. The supervising judge at each location is responsible for the administrative and calendar operations of the departments located there and for assignment of proceedings in those cases that are filed there.

C. Except as set forth otherwise below or elsewhere provided in these rules, venue for all cases will be according to the zip codes found on the Court's website at www.sdcourt.ca.gov.

D. The following matters must be filed in the Central Division:

1. Matters now heard on the mental health calendar of the court, including all proceedings under the Lanterman-Petris-Short Act, except permanent conservatorships;

2. Appeals to the appellate division;

3. The return and filing of indictments;

4. False claims actions; and

5. If a case primarily involves construction defect claims, the case must be filed in the Central Division (Hall of Justice) through the court approved e-filing vendor, and will be assigned to a judge designated to hear construction defect cases.

E. Venue for CEQA Cases. Venue for CEQA (California Environmental Quality Act) cases is divided into two divisions, Central and North County. The East and South Divisions are included in the Central Division for purposes of CEQA cases only. Original petitions must show the proper venue and be filed in the appropriate court according to zip code as set forth in the zip code list accessed via the court's Internet site at www.sdcourt.ca.gov/portal/page?_pageid=55,1057631&_dad=portal&_schema=PORTAL and in accordance with this rule.

F. Venue for Criminal Cases

1. Generally. Except as otherwise set forth in these rules, the People must file all criminal cases in the division in which the crime is alleged to have occurred, in accordance with the zip code list found on the court's web site at www.sdcourt.ca.gov. The People may make written application to the Supervising Judge of the division in which the case would be filed in accordance with the zip code list on the court's web site, setting forth good cause why that case should not be filed in accordance with this rule.

2. Death Penalty Cases. Death penalty cases must be filed in the Central, East County and North County Divisions in accordance with the zip codes found at http://www.sdcourt.ca.gov. The South County Division is included in the Central Division for purposes of venue in death penalty cases only.

3. City of Coronado and City of Del Mar Cases. Cases arising in the City of Coronado must be filed in the South County Division, and cases arising in the City of Del Mar must be filed in the North County Division.

G. Venue for Adult Traffic/Minor Offense Cases. Except as set forth in Vehicle Code section 40502, subdivision (b), venue for traffic and minor offense cases charged against adults will be in accordance with the zip code list set forth on the court's web site (www.sdcourt.ca.gov), except that cases arising in the City of Coronado must be filed in the South County Division, and cases arising in the City of Del Mar must be filed in the North County Division.

H. Venue for Juvenile Traffic/Minor Offense Cases. Venue for traffic and minor offense violations charged against juveniles (under 18 years of age) will be in the Juvenile Court of the Central Division, except the following categories of citations will be accepted for filing in the Adult Traffic and Minor Offense Departments of the respective Court Divisions:

1. All Vehicle Code infraction citations issued to juveniles (under 18 years) that do not involve drugs or alcohol;

2. All Municipal Code and Local Ordinances that involve driving or operation of a motor vehicle;

3. All appeals of parking citations issued to juveniles (under 18 years) and minors (18-21 years);

4. All infractions citations issued to minors (18-21 years) for Business and Professions Code violations involving minors in possession and related alcohol and drug charges; and

5. Citations issued to minors (18-21 years) for Vehicle Code section 23140, subdivision (a), (person under 21 years, driving under the influence of alcohol). See exception noted below.

Exception: Citations issued to minors (18-21 years) for Vehicle Code section 23140, subdivision (a), in the Central Division will be accepted for filing in the Criminal Division downtown.

I. Venue for Juvenile Delinquency Cases. Venue for all delinquency cases initiated by petition will be in the Juvenile Court of the Central Division, except as otherwise set forth in these rules.

J. Venue for Juvenile Dependency Cases. Juvenile dependency cases must be filed in the Central, North County, South County and East County Divisions in accordance with the zip code list that is as agreed upon by the Juvenile Court, Child Welfare Services, and County Counsel. The current list will be maintained by the Presiding Judge of the Juvenile Court.

K. Venue for Family, Domestic Violence and Child Support Cases. Venue in family law, domestic violence and child support cases will be governed by rules 5.1.2, 5.2.3 and 5.9.3 of Division 5 – Family Law, of these Local Rules.

L. Venue for Probate Cases. Venue in probate cases will be governed by rule 4.1.2 of Division 4, Probate of these rules.

M. Transfer of Actions. Any action or proceeding may, for good cause shown on motion of a party, and after hearing, be transferred to a different division. Motions and hearings on such transfer must

be heard in the court where the action or proceeding is pending. In ruling on such a motion the judge presiding may, in his or her discretion, deny transfer of a case that has been filed in a court not authorized by subsection C above.

The presiding judge, supervising judge, or designee (including any judge assigned for all purposes to a case), may order a transfer at any time without motion or hearing in his or her discretion for reasons stated in the order to transfer. Although transfer will ordinarily be ordered in civil matters at the time of the case management conference or in criminal matters at the time of arraignment, such transfer may be ordered at any time at the discretion of any of the judges set forth above. If the order to transfer is made without a hearing or at a time other than a hearing, any party will be entitled to be heard concerning such transfer if a request for hearing is made to the judge who ordered the transfer within 10 days after notice of transfer.

Whenever, in the discretion of the presiding judge or his or her designee, the criminal calendar in any division has become so congested so as to jeopardize the right of a party to a speedy trial or to interfere with the proper handling of the judicial business in that division, or for security or calendar management reasons, the judge may order those cases that are to be filed in that division be filed in a different division.
(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2001; Renum. 7/1/2001; Rev. 1/1/2002; Rev. 1/1/2003; Rev. 1/1/2004; Rev. & Renum. 1/1/2006; Rev. 1/1/2007)

CHAPTER 3
EXECUTIVE OFFICER OF THE COURT

Rule 1.3.1

Appointment, Powers, and Duties

A majority of the judges of the court may appoint a court executive officer pursuant to section 71620 of the Government Code who also acts as jury commissioner and clerk of the court. Any reference in these rules, the California Rules of Court, or statutes, to the executive officer, clerk of the court, or jury commissioner refers to the executive officer who functions in each of these capacities.

The powers, duties, and responsibilities transferred from the county clerk to the court executive officer pursuant to this rule include all of those performed by the county clerk with respect to court actions, proceedings, and records.

The county clerk is hereby relieved of any obligation imposed by law with respect to the above powers, duties, and responsibilities. This rule does not transfer from the county clerk to the court executive officer obligations in reference to the issuance of marriage licenses or the filing of fictitious business names.
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

CHAPTER 4
MISCELLANEOUS PROVISIONS

Rule 1.4.1

Records

Nothing on file in any court may be taken out of the clerk's office or the civil business office unless it is going to a courtroom or chambers of a judge.
(Adopted 1/1/1998; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 1.4.2

Exhibits

Evidence admitted in any case before any court will be only those items required in the case and will be retained by the court for the minimum time required by law, unless good cause is shown to retain the evidence. No exhibit will be received by any court if the exhibit poses a security, storage, safety, or health problem.

A. Exhibits which will not be received include but are not limited to:

1. Any type of explosive powder;
2. Explosive chemicals, toluene, ethane;
3. Explosive devices, such as grenades or pipe bombs;
4. Flammable liquids such as gasoline, kerosene, lighter fluid, paint thinner, ethyl-ether;
5. Canisters containing tear gas, mace;
6. Rags which have been soaked with flammable liquids;

7. Liquid drugs such as phencyclidine (PCP), methamphetamine, corrosive liquids, pyrrolidine, morpholine, or piperidine; and

8. Samples of any bodily fluids, liquid or dried.

B. No exhibits will be accepted by the exhibits custodian unless:

1. Containers with liquid substances are clearly marked and identified as to type and amount;

2. Containers of controlled substances are clearly marked, identified, weighed, and sealed;

3. Cash is specifically identified, whether individually or packaged, as to the total amount and number of each denomination;

4. Firearms are secured by a nylon tie or trigger guard; and

5. Hypodermic needles are placed in containers which will safeguard personnel.

Unless otherwise ordered, unidentified liquids, containers, controlled substances, or other suspect substances will be returned to the party offering them.

All exhibits must be individually tagged with the proper exhibit tag. Each exhibit tag must be properly completed and securely attached to the exhibit. Any exhibit improperly tagged, marked, weighed, or otherwise identified will not be accepted by any court. Original photographs must be substituted for any photographically enlarged exhibits. A court, in its discretion, may order a photograph substituted for large or bulky exhibits which might pose a storage problem. A court, in its discretion, may admit any exhibit in the interest of justice.

Only attorneys of record and court employees may view the exhibits. All other interested persons must obtain an order of the court. Viewing must take place in the presence of an exhibit custodian. Exhibits may not be altered or taken apart, except by court order. Special viewing equipment will not be permitted, except by court order.

Attorneys, investigators, law enforcement agencies, and other interested parties may seek temporary release of exhibits for copying or laboratory testing. A stipulation and court order is required in all instances, except a stipulation is not required in civil cases. The party seeking the release must present a certified copy of a signed stipulation and order to the exhibit custodian. The order must include the case number, names of the parties, name and telephone number of the person to whom the exhibits are to be released, a description of the exhibits, and the date the exhibits are to be returned.

Exhibits in a criminal matter may be released for use in a civil action brought by the victim of the crime. To obtain such exhibits, the party in the civil action must submit a stipulation signed by the prosecutor and criminal defense counsel (including appellate counsel if applicable), a declaration, and certified copy of an order signed by the judge. The stipulation shall bear the criminal case caption and number, and reference the civil case by name and number.

Unless specifically ordered by the court, all exhibits marked, identified and/or admitted into evidence in a civil case must be retrieved by the offering party at the conclusion of trial. The party introducing the exhibit is responsible for maintaining and preserving that exhibit pending any post verdict proceedings and appeals, until there is a final disposition of the action or proceeding. All exhibit tags and other identifying markings or information concerning each exhibit must remain in place and not be disturbed. Each exhibit must remain intact and in the same condition as during trial. In the event further proceedings of any court having jurisdiction of the matter require the presence of any exhibit, the party introducing the exhibit must promptly deliver the exhibit to the court, with notice to all parties.
(Adopted 1/1/1998; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007)

Rule 1.4.3

Jury Lists

The jury master list for the Central Division will be comprised of those jurors residing in any of the filing districts.

The jury master list for the East, North and South County Division will be comprised of those jurors residing in the filing district as determined by zip code that corresponds with the division in which the juror lives. The zip code list may be accessed via the court's Internet site at http://www.sdcourt.ca.gov/portal/page?_pageid=55,1057631&_dad=portal&_schema=PORTAL.

The jury master list will be drawn so that all eligible persons have an equal chance of being selected for the court division in which they reside regardless of their place of residence. The Jury Commissioner or his or her designee may grant a temporary excuse from jury service to a prospective juror who has served on a grand or trial jury in any state or federal court during the previous 36 months. A

prospective juror who was summoned and appeared for jury service in any state or federal court during the previous 12 months will be temporarily excused from jury service, upon request.
(Adopted 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008)

DIVISION II:
CIVIL

CHAPTER 1
GENERAL POLICIES AND PROCEDURES

Rule 2.1.1

Policy

It is the policy of the courts to manage all cases in accordance with the Standards of Judicial Administration, Appendix to the California Rules of Court. Nothing in the Appendix prevents the courts from issuing an exception order based on a specific finding that the interests of justice require a modification of the routine processes as prescribed. However, no procedure or deadline established by these rules or order of the court may be modified, extended or avoided by stipulation or agreement of the parties, except as permitted by section 68616 of the Government Code, unless approved by the court in advance of the date sought to be altered.
(Adopted 1/1/1998; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.1.2

Filing and Service of Papers

Unless specifically directed otherwise, all papers must be filed in the civil business office of the appropriate division.

A. Forms. Photocopies or computer generated duplicates of Judicial Council and court forms may be used only if the copies are clear, legible, easily readable, the same color as the original, and submitted on the same type of paper (e.g., NCR).

B. Conformed Copies. The court will conform only one copy of each original submitted for filing. If conformed copies are to be returned by mail or messenger, a stamped, self-addressed envelope or messenger slip must be included.

C. Proofs of Service. Proofs of service must be signed by the person who actually accomplished the service. Where forms of service involve more than one component, declarations must be signed by each person completing a component. For example, substituted service of summons is often accomplished by one person doing the substituted service in the field while another completes the service by mailing the copies to the named defendant. In that case, declarations must be signed by each.
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 2.1.3

Case Assignment

At the time an action is filed, it will be assigned either to the master calendar or to a judge for all purposes. A Notice of Case Assignment, which includes the name, physical location, and department of the assigned judge, if any, and a Stipulation to Use of Alternative Dispute Resolution Process form may be generated at the time the case is filed. It is mandatory that the plaintiff or cross-complainant serve all defendants with a copy of the Notice of Case Assignment and other documents as set out in rule 2.1.5.

All construction defect cases in the county will be assigned to one of the designated construction defect departments in the Central Division. Any pre-litigation petition brought to the court pursuant to Civil Code section 1375, subdivision (n), will be assigned a case number and assigned to a designated construction defect department in the Central Division. Any construction defect complaint filed after completion of the pre-litigation requirements of Civil Code section 1375 et seq., will be assigned the same case number as any pre-litigation case number existing for the action.
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Rev. 1/1/2004; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.1.4

Reserved for Future Use
(Del. 1/1/2008)

Rule 2.1.5

Service of Complaint

Within 60 days of the filing of the complaint, a Certificate of Service must be filed with the court, unless a Certificate of Progress has been filed indicating why service has not been effected on all parties and what is being done to effect service. A general appearance by, or entry of default against one or more defendants, does not dispense with plaintiff's obligation to file a Certificate of Service. Compliance with this rule may be reviewed at the initial case management conference.

To qualify for other than personal service of a complaint and summons under section 415.20 et seq. of the Code of Civil Procedure, personal service must be attempted on at least three different days at three different times of day. All attempts cannot be in the a.m. nor all in the p.m. At least one of the three attempts must be before 8 a.m. or after 5:30 p.m., and at least one of the three attempts must be between the hours of 8 a.m. and 5:30 p.m. or on Saturday or Sunday at any time. If service is attempted at a business address, all three attempts may be made during the normal business hours of that business.

If service by publication or some other method of service requiring leave of court cannot be completed within 60 days of the filing of the complaint, the last paragraph of the proposed order permitting such service must contain a blank space for the court to specify the date by which a proof of service and/or a Certificate of Service must be filed. A Certificate of Progress does not need to be filed in this instance.

The following must be served with the complaint:

A. The Notice of Case Assignment (rule 2.1.3);

B. A notice of the amount of special and general damages if the complaint seeks to recover damages for personal injury or wrongful death;

C. A notice of the amount of punitive damages sought; and

D. ADR information materials.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Renum. 1/1/2006)

Rule 2.1.6

Defendant's Appearance

Unless a special appearance is made, each defendant served must generally appear (as defined in Code Civ. Proc., § 1014) within the time required by the Code of Civil Procedure, or within 15 days thereafter if the parties have stipulated to extend that time.

If a defendant is unable to make a timely general appearance, a Certificate of Inability to Respond must be filed and served stating why a responsive pleading could not be filed. The filing of a Certificate of Inability to Respond constitutes a general appearance for purposes of these rules.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Rev 1/1/2005; Renum. 1/1/2006)

Rule 2.1.7

Request for Entry of Default

If a defendant does not make a general appearance within the time provided by statute, or makes an unsuccessful motion to quash, stay, or dismiss the action on the grounds of inconvenient forum or improper court, and thereafter fails to plead within the time provided by statute or in these rules, the plaintiff must request entry of default forthwith.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.1.8

Default Judgment

Applications for default judgment should be submitted on declarations pursuant to section 585, subdivision (d), of the Code of Civil Procedure. See the Civil forms area of the court's web site for the most recent version (http://www.sdcourt.ca.gov/portal/page?_pageid=55,1058589,55_1058635&_dad=portal&_schema=PORTAL).
The court will notify the parties if an oral prove-up hearing or additional documentary evidence is required. (See rule 2.5.11, Default Attorney Fee Schedule.)

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 2.1.9

Case Management Conference

The court expects the complaint and any cross-complaints will be served, all answers filed or defaults entered, and any challenges to the pleadings heard by the time of the initial case management conference.

A. Scheduling and Notice. Civil cases (excluding unlawful detainers) may, in the court's discretion, be set for a case management conference approximately 150 days after the complaint is filed. The court will give notice of the case management conference to all parties. Further, parties must serve by mail within 10 days of the date of the notice a copy of such notice on all parties who have been brought into the action who were not included in the court's proof of service. Proofs of such service must be filed simultaneously with the court and accompanied by a declaration stating the name of the party served; the name, address and phone number of the party's counsel of record, if any; and the nature and status of the party's involvement in the case.

Case management conferences will also be set by the court in all cases transferred from another court, reclassified pursuant to the Code of Civil Procedure, or stayed as provided in rule 2.1.13, and in unlawful detainer actions in which the defendant has filed an answer and the court has been notified that possession is no longer in issue.

It is the policy of the court to hold the case management conference on the date originally set. Continuances may be requested ex parte with a declaration showing good cause why the conference should be continued. However, if a disposition as to all parties has been filed with the court at least five court days prior to the hearing date, the case will be taken off calendar and no appearances will be required.

This rule remains in effect after July 1, 2002, notwithstanding California Rules of Court, rule 3.20, by the authority granted in California Rules of Court, rule 3.722, to the effect that "[t]he court may provide by local rule for the time and manner of giving notice of the parties."

B. Preparation for Conference. The primary focus of the initial case management conference will be to determine the status of the case to ensure compliance with the policy as stated in rule 2.1.1 and to determine if alternative dispute resolution would be appropriate.

A Case Management Statement must be completed by each party and timely filed with the court. Parties will not be required to complete a Case Management Statement for subsequent conferences unless ordered to do so by the court.

Parties completely familiar with the case and possessing authority to enter into stipulations must be present or appear pursuant to California Rules of Court, rule 3.670, at the case management conference and must be fully prepared to discuss any issues addressed by a Case Management Statement and all other matters specified in the notice of hearing provided by the court. Any attorney making a special appearance for counsel of record must have actual knowledge of the facts and procedural history of the case. If a party is not fully prepared, the court may continue the hearing and impose sanctions against the offending party. If the hearing proceeds as scheduled, the orders made will not be subject to reconsideration due to a party's unfamiliarity with the case at the time of the hearing.

(Adopted 1/1/1998; Rev. 1/1/2001; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 2.1.10

Cases "At Issue"

Cases may be deemed "at issue" when all parties are before the court and challenges to pleadings are complete, or the deadlines set by the court for the completion of these events have passed. This is usually determined by the court at the initial case management conference. Parties wishing an earlier determination and/or who seek referral to alternative dispute resolution, and/or who seek preferential trial setting may do so by ex parte request. No new parties may be substituted by "Doe" designation or added by amendment of pleadings after the case is deemed at issue, without leave of court.

Unless the court orders otherwise, all amendments to pleadings allowed after the case is at issue will be deemed filed and served on the date leave to amend is granted. If the amendment adds a new party, the new party must be served within 30 days of the date leave to amend was granted and the proof of service on the new party must be filed with the court. Upon the appearance of a new party, the case will remain at issue, unless otherwise ordered. If the new party is not timely served with process, the new party may be dismissed by the court and/or other sanctions may be imposed.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.1.11

Expert Witnesses

The court will propose deadlines for the exchange of information concerning expert witnesses and their discoverable reports and writings in accordance with section 2034 of the Code of Civil Procedure at the case management conference. Although the demand requirement of that section may be dispensed with at this hearing, all other provisions of section 2034 of the Code of Civil Procedure will be strictly enforced by the court.

Excessive expert fees are limiting access to the court and undermining the quality of justice. It is the policy of the court that, in addition to the criteria required to be considered in deciding motions brought pursuant to section 2034, subdivision (i)(4) of the Code of Civil Procedure, the court will consider the ordinary and customary fees charged by similar experts for similar services within the relevant community.

Parties will be permitted to designate only those experts they in fact intend to call at trial. It is the policy of the court that parties are limited to one expert per field of expertise per side, pursuant to section 723 of the Evidence Code, absent a court order to the contrary. The court will determine which parties constitute "a side" at trial, if necessary.

Expert testimony must not be used simply to advocate a particular position, and must be limited in scope in accordance with section 801, subdivision (a) of the Evidence Code to opinions on subjects which are sufficiently beyond common experience that an expert's opinion will assist the trier of fact.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001, Renum. 1/1/2006; Rev. 1/1/2008)

Rule 2.1.12

Reserved for Future Use

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2000; Renum. 7/1/2001; Rev. & Renum. 1/1/2006; Del. 1/1/2009)

Rule 2.1.13

Stays of Actions

If a party files a notice of stay in accordance with the California Rules of Court, the court may either stay the action or set the matter for hearing. At the time of that hearing, the court may propose dismissing the action without prejudice, and reserving jurisdiction to reinstate the case nunc pro tunc when the stay is no longer in effect. Alternatively, parties are encouraged to stipulate to the dismissal of such cases without prejudice, expressly reserving the court's jurisdiction to set aside the dismissal and reinstate the case nunc pro tunc when the stay is no longer in effect. If the court stays the action without setting the matter for hearing, any party who claims to be exempt from the stay and who seeks to prosecute the action further must object by noticed motion in the stayed action.

Upon the expiration of the stay period, an action may be dismissed unless good cause has previously been shown, in writing, to the contrary. The stay may be extended for additional periods for good cause shown.
(Adopted 1/1/1998; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 2.1.14

Structured/Conditional Settlements, Taking Matters Off Calendar

Upon conditional settlement of a case, parties must notify the court as follows:

A. The parties are required to give notice to the court whether the conditional settlement either 1) contains a stipulation to immediate dismissal with a reservation of jurisdiction to set aside the dismissal and enter judgment upon nonperformance or 2) does not contain such a stipulation and requires dismissal only after full performance of the settlement terms.

B. Removal of pending matters from the court calendar may be effected by telephone, in the discretion of the court, if:

1. There are no unrepresented litigants; and

2. All unserved parties or parties not participating in the settlement will be dismissed.

Trials may be taken off calendar by telephone if all of the above conditions are met and the dismissal of the entire action will be filed according to the terms of the settlement not more than 365 days after the date the original complaint was filed. Otherwise, the parties must appear ex parte.
(Adopted 1/1/1998; Renum. 7/1/2001; Rev. 1/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2007)

Rule 2.1.15

Trial Readiness Conference

A trial readiness conference will generally be scheduled four weeks before the trial date. The parties must meet prior to the scheduled hearing and attempt to resolve the case, or, if that is not possible, limit issues for trial. If the case is not settled in its entirety, all parties must prepare and sign a joint trial readiness conference report in the format set forth in the joint trial readiness conference report available on the Civil forms area of the court's web site: (http://www.sdcourt.ca.gov/portal/page?_pageid=55,1058589,55_1058635&_dad=portal&_schema=PORTAL). Separate reports will not be accepted. Failure to disclose and identify all trial exhibits and witnesses intended to be called at trial and all other items required by the report may, in the court's discretion, result in exclusion or restriction of use at trial. The completed report must be presented to the judge at the scheduled conference. No part of the joint trial readiness conference report is to be received into evidence against any party in later proceedings.

Parties completely familiar with the case and possessing authority to enter into stipulations must be present at the scheduled hearing. Orders made will be binding on the parties and will not be subject to reconsideration due to an attorney's unfamiliarity with the case at the time of the hearing. The parties must be prepared to discuss any unusual evidentiary or legal issues anticipated during the trial and all remaining matters believed by any party to be appropriate for stipulation.

During the trial readiness conference, the court will review with counsel and sign or issue the advance trial review order setting forth specific trial preparation requirements of the trial department.
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 2.1.16

Jury Instructions

On the scheduled trial date, the parties must submit the full text of proposed jury instructions to the court. Jury instructions must be gender neutral and double spaced on plain paper. They may include instruction numbers but the mere submission of a list of instruction numbers is not acceptable. Authority may be included on copies of special instructions submitted to the court, but should not appear on the originals.
(Adopted 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.1.17

Juror Questionnaire

If juror questionnaires are proposed by counsel, the questionnaires must be accompanied by a Juror Questionnaire Cover Sheet which must be provided by the court.

(Adopted 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.1.18

Motions in Limine

Motions in limine must be limited in scope in accordance with *Clemens v. American Warranty Corp.* (1978) 193 Cal.App.3d 444, 451: e.g., evidentiary issues where attempts to "unring the bell" would be unduly prejudicial or futile. Unless otherwise directed by the court, counsel must file and serve motions in limine and opposition thereto five court days and two court days respectively prior to trial call. The following motions in limine will be deemed granted at the time of the trial readiness conference if applicable:

A. Motion excluding evidence of collateral source;

B. Motion excluding evidence of or mention of insurance coverage;

C. Motion excluding experts not designated pursuant to section 2034 of the Code of Civil Procedure; and

D. Motion excluding offers to settle and/or settlement discussions.

Written motions should not be submitted on the above issues.

(Adopted 1/1/2000; Renum. 7/1/2001, Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.1.19

Tentative Ruling Policy

Any party, or attorney for a party, who desires to have any demurrer, motion, or order to show cause set for hearing must contact the calendar clerk for the judge assigned to the case to reserve a hearing date.

Prior to the hearing, any civil department may issue a tentative ruling in a law and motion matter, in the sole discretion of the assigned judge. The tentative ruling will be issued in conformance with the tentative ruling procedures set forth in California Rules of Court, rule 3.1308. If a tentative ruling is issued the day before the date set for hearing, this court follows rule 3.1308 and no notice of intent to appear is required to appear for argument. The tentative ruling may direct the parties to appear for oral argument and may specify the issues on which the court wishes the parties to provide further argument. The tentative ruling may be obtained by calling the court tentative ruling number for the court branch the case is pending in, or by navigating to the court's website.

This rule does not preclude posting a tentative ruling the day of the hearing pursuant to rule 3.1308(b), nor does it mandate a tentative ruling be issued on all law and motion matters.

The tentative ruling numbers are as follows:

Central:	619-450-7381
North:	760-201-8400
East:	619-456-4492
South:	619-746-6275

(Rev. 7/1/2004; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

CHAPTER 2
SETTLEMENT CONFERENCE

Rule 2.2.1

Requesting a Settlement Conference

Settlement conferences may be requested if the parties certify that:

A. Settlement negotiations between the parties have been pursued, demands and offers have been tendered, and resolution has failed. If the court has ordered the parties to participate in a settlement conference, all parties must exchange demands and offers, and communicate responses thereto. This must be done in good faith and within a reasonable time to allow the opposing party to consider and respond to the offer or demand, but in no event will the first offer or demand be sent any later than five days before the settlement conference;

B. A judicially supervised settlement conference presents a substantial opportunity for settlement; and

C. The case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required.

When a matter has been accepted by the court for the purposes of conducting a settlement conference, all parties must comply with the provisions of rules 2.2.2, 2.2.3, and 2.2.4 unless otherwise ordered.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 2.2.2

Mandatory Appearance

The provisions of rules 2.2.2, 2.2.3, and 2.2.4 apply to all court-ordered settlement conferences unless otherwise ordered. All parties must be personally present. Claims adjusters for insured defendants, or right-of-way agents in condemnation proceedings, must be present with complete authority to settle the case.

Counsel appearing on behalf of their clients must be completely familiar with the case and possess complete authority to negotiate and settle. Counsel must have authority to make a specific demand and must be authorized to make an offer or counteroffer in a specific amount. If a participant is not fully prepared or fails to participate in good faith, the court may continue the hearing and/or impose sanctions against the offending party. If the hearing proceeds as scheduled, the orders made will not be subject to reconsideration due to counsel's unfamiliarity with the case at the time of the hearing.

For good cause shown, a party or agent may be excused from attendance at such conferences provided such party or agent will be available by telephone during the conference. Unless excused by the court, such requests must be submitted to the court in the form of a stipulation signed by all attorneys of record, or by ex parte appearance at least five court days prior to the settlement conference.

If the settlement conference is to be heard by a temporary judge, such stipulations and settlement conference briefs must be submitted to the court and ex parte requests must be made to the independent calendar department to which the case is assigned.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001, Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.2.3

Settlement Statements/Briefs

Written statements of the position of each party must be lodged with the settlement conference judge and served on other parties five court days prior to the settlement conference, unless otherwise ordered. If service is by mail, all papers must be mailed not less than ten days before the court date. Settlement conference statements do not become a part of the file and will be discarded. Confidential matters may be brought to the attention of the settlement judge during the settlement conference either orally or in writing.

Statements must not exceed five pages and must include the necessary information to concisely support issues of liability and damages, including a settlement demand and offer, as well as an itemization of special and general damages, if applicable. Mandatory settlement conferences are governed by the California Rules of Court.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001, Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.2.4

Notifications of Settlement or Continuances

A. Settlement. In accordance with the California Rules of Court, if a case is settled, the plaintiff must immediately give the court written notice. The plaintiff must also immediately notify the court by phone or in person if a hearing, conference, or trial date is imminent. The only time a hearing set by the court may be taken off calendar is when the plaintiff advises the court that the case has been settled. In that event, a show cause hearing regarding dismissal will be conducted in 45 days. The show cause hearing will be taken off calendar if a dismissal of all complaints and cross-complaints, or a judgment as to all complaints and cross-complaints, is filed with the court no later than five court days prior to the hearing. If such documentation has not been received by the date set for the show cause hearing, the court will immediately order appropriate sanctions and/or dismiss the entire action.

Failure to advise the court at least five court days before the settlement conference that it will not proceed as scheduled, for any reason other than the settlement of the case in its entirety within the five court day period, may be deemed by the court to be a violation of an order of the court, punishable by monetary sanctions payable to the county under section 177.5 of the Code of Civil Procedure, as well as any other sanction provided by law. In addition to monetary sanctions, any party or attorney who fails to attend a settlement conference risks having their complaint dismissed or their answer stricken and default entered.

B. Continuances. Any party requesting a continuance must appear ex parte and show good cause why the settlement conference should be continued. At the ex parte hearing, a stipulation may be presented to the court, signed by all parties, accompanied by a declaration showing good cause.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Rev. 1/1/2005; Renum. 1/1/2006)

CHAPTER 3
ALTERNATIVE DISPUTE RESOLUTION (ADR)

ADR Policy Statement. It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e., the court's mediation and arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

Rule 2.3.1

Judicial Arbitration

A. Submission to Arbitration. The court elects to come within the provisions of section 1141.11 et seq. of the Code of Civil Procedure regarding judicial arbitration of all at-issue civil actions which are not exempt. All actions submitted to arbitration pursuant to these sections will be subject to the provisions contained therein, as well as rules of procedure set forth in the California Rules of Court, rule 3.810 et seq., and in these rules.

B. Policy. It is the policy of the court to discourage any unnecessary delay in civil actions. Continuances are discouraged and timely resolution of all actions, including matters submitted to any form of ADR, is encouraged.

After a case is "at issue," the court may order it to judicial arbitration. Counsel must be prepared to discuss whether the arbitration will be binding or non-binding, and to select an arbitrator. Dismissal of all unserved, non-appearing, and fictitiously named parties will also be addressed. The court will propose dates to exchange information concerning expert witnesses and their discoverable reports and writings in accordance with rule 2.3.3. Although the demand requirement under section 2034 of the Code of Civil Procedure may be dispensed with at this hearing, all other provisions of section 2034 and rule 2.3.3 will be strictly enforced.

C. Exemption from Arbitration. Matters which are exempt from judicial arbitration are set forth in the California Rules of Court, rule 3.811, and section 1141.11 of the Code of Civil Procedure.

Unless otherwise ordered by the court, the following categories of actions are also exempt from arbitration, as provided by the California Rules of Court, rule 3.811, and will be set directly for trial:

1. Civil actions in which no jury trial is demanded and the estimated time for trial is one day or less;

2. Civil actions in which any party is not represented by counsel; and

3. Collection actions (i.e., actions primarily seeking money on an assigned claim).

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2004; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 2.3.2

Arbitration Procedures

Arbitration rules of procedure are set forth in the California Rules of Court, rule 3.810 et seq., and in these rules.

A. Appointment of Arbitrator. At the case management conference, the parties must stipulate to the appointment of any arbitrator on the list of superior court arbitrators. If the parties do not stipulate, the judge who ordered the case to judicial arbitration will appoint the arbitrator. The appointment of an arbitrator will be effective immediately and will extend for 90 days. Before any person may be appointed as an arbitrator, that person must provide a statement on a form provided by the court that they have read and will comply with the provisions of rule 2.3.1, subdivision A.

B. Continuances. The court discourages continuances. Rules regarding continuances of arbitration hearings are set forth in the California Rules of Court. Rules regarding the completion of cases within 90 days and the reappointment of an arbitrator for good cause are set forth in the California Rules of Court. If a continuance is denied or 90 days have elapsed from the time of appointment, it is mandatory that all parties appear before the judge who ordered the case to judicial arbitration. If it appears to the court that a request for continuance is not made with good cause, the court may impose monetary sanctions upon the requesting party.

C. Conduct of the Arbitration Hearing. The arbitration hearing must be conducted as follows:

1. The arbitrator must administer the oath;

2. Counsel and the arbitrator are to be formally addressed as Mr., Mrs., Miss, or Ms. during the hearing;

3. At the time of the arbitration hearing, or at any other time designated by the arbitrator, each attorney must submit to the arbitrator (not the court) the following, unless excused from doing so by the arbitrator:

a. Copies of any offered pleading, arranged chronologically and appropriately highlighted;

b. Copies of any offered deposition transcript or record appropriately highlighted;

c. An arbitration brief consisting of:

(1) A concise statement of facts;

(2) Legal and factual contentions of each party;

(3) A statement of damages sought to be awarded including the amount claimed, medical expenses, and property damage;

(4) Copies of medical reports and bills;

(5) Copies of appraisals/repair estimates; and

(6) Copies of repair bills.

d. If the arbitration award is not filed within 10 days after the arbitration hearing, or an extension of 20 days is not granted pursuant to the California Rules of Court, rule 3.825(b), either party may notify the arbitration department. The arbitrator will then be requested to submit the award or appear before the judge who ordered the case to judicial arbitration to show cause why rule 3.825(b) of the California Rules of Court was not satisfied.

(Adopted 1/1/1998; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 2.3.3

Exchange of Experts After Arbitration

Failure to comply with this rule may result in a party's inability to call one or more expert witnesses at trial, or subject the noncomplying party to monetary sanctions.

Pursuant to the stipulation of the parties at the case management conference, exchange of experts after arbitration must be made according to the following schedule:

A. Initial Exchange. Within 15 days of the date of any method of service of a trial de novo request, pursuant to section 2034 of the Code of Civil Procedure each party must personally serve on all other parties a designation of expert witnesses who will be relied upon at the trial de novo, along with all discoverable reports and writings, if any, of those experts. However, service by mail of the above designation is permitted if made within 10 days of service of the trial de novo request. Parties will be permitted to designate only those experts they in fact intend to call at trial. It is the policy of the courts that parties are limited to one expert per side per field of expertise, pursuant to section 723 of the Evidence Code and rule 2.1.11, absent a court order to the contrary.

B. Supplemental Exchange. Any supplemental designation of experts must be personally served within 5 days of any personal service of the opponent's initial list, or within 10 days of any mail service of the opponent's initial list.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.3.4

Request for Trial De Novo

A request for trial de novo must be filed in the civil business office pursuant to section 1141.20 of the Code of Civil Procedure and the case will be set for trial.

Withdrawal of Trial de Novo Requests. If a party has requested trial de novo, the request may be withdrawn by a written stipulation, signed by counsel for all parties appearing in the case, that the award may be ordered as a judgment.

(Adopted 1/1/1998; Rev. 1/1/2001; Renum. 7/1/2001; Rev. 1/1/2003; Renum. 1/1/2006)

Rule 2.3.5

Prohibition Against Post Arbitration Discovery

Stipulations for post arbitration discovery pursuant to section 1141.24 of the Code of Civil Procedure will be recognized by the court, provided that no such stipulation modifies, extends, or avoids any procedure or deadline established by these rules or order of the court. Expert discovery is not within the prohibition of post arbitration discovery codified under section 1141.24 of the Code of Civil Procedure, but is subject to the applicable rules and orders of the court.

(Adopted 1/1/1998; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 2.3.6

Monetary Sanctions

In addition to the provisions of the California Rules of Court, rule 3.829, regarding notification of settlement, failure of the parties to notify the arbitrator and the court of a continuance or their inability to proceed at least two court days prior to the time set for the arbitration hearing may, upon written notice given by the court, result in an order to show cause why the parties should not pay $150 or other sanctions.

(Adopted 1/1/1998; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 2.3.7

Civil Mediation Program

All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participate in the Civil Mediation Program.

A. Stipulation to Mediation. At any time prior to the Case Management Conference, parties may stipulate to mediation. The stipulation must include the name, address and phone number of the mediator and one alternate mediator. If the stipulation is granted, Appointment of Mediator notices will be issued.

B. **Case Management Conference**. If parties do not stipulate to mediation prior to the Case Management Conference, the judge will encourage all parties to consider mediation or other ADR options. If the court determines a mediator would assist in the resolution of a case, parties will be asked to stipulate to mediation which will be reflected on the Case Management Conference's Minute Order.

C. Panel of Mediators. Parties may select any mediator to mediate their matter. The court maintains a panel of court-approved mediators who have satisfied training and experience requirements established by the court and who must adhere to minimum standards of practice pursuant to California Rules of Court, rule 3.850 et seq., and other program policies and procedures.

D. Payment of Mediators. Mediators must be compensated directly by the parties. The fees and expenses of mediators must be shared equally between the parties, unless otherwise agreed.

Mediators on the court's approved panel have agreed to charge $150.00 per hour for each of the first two hours and their regular hourly rate thereafter for court-referred mediation.

Mediators on the court's approved panel may not charge parties for preparation or administrative time, but may require that fees be deposited in advance of the mediation session and may have cancellation fees and policies.

Parties may also utilize the services of mediators who are not on the court's approved panel. They will be charged the mediator's regular hourly rate and any other fees in accordance with the mediator's policies.

E. Selection of Mediators. Parties are encouraged to make their selection at or before the time of the Case Management Conference. If they are unable to make a selection, the case will be referred back to the court for the setting of a future hearing. If parties agree on a mediator and alternate and notify the court before the hearing, the hearing will be vacated.

F. Timing of Mediation and Trial Dates. Cases will be referred to mediation for up to 120 days. At the time of the Case Management Conference, tentative trial dates will also be given. If the mediation has ended in non-agreement, the court will confirm the trial dates given. If parties request an extension of time for mediation, they must file a stipulation indicating the date of the future mediation session. Alternatively, they may contact the mediator to request an extension in 30-day increments which will be subject to approval by the court. In all cases, a Reappointment of Mediator notice will be generated if the extension is approved.

G. Attendance at Mediation. All parties, their counsel and persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause. If any consent to settle is required for any reason, the party with the consent authority must be personally present at the mediation.

(Adopted 2/28/2000; Rev. 1/1/2001; Renum. 7/1/2001; Rev. 1/1/2003; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

CHAPTER 4
SPECIAL CASE CATEGORIES

Rule 2.4.1

Judgment Debtor Examination Proceedings

A. Setting Hearings. Judgment debtor examination dates are obtained by submitting the appropriate fees, an original and two copies of the order for appearance of judgment debtor, and a stamped, self-addressed envelope or messenger service return slip to the appropriate civil business office. Conformed copies with the appearance date, time, and place will be returned to the judgment creditor for service.

B. Proof of Service. Proof of service must be filed no later than five days before the date of the hearing. However, if the person ordered to appear does appear and is ready to proceed, the examination may be conducted, with or without proof of service having been timely filed, at the discretion of the court.

C. Appearance at Examination. Upon the call of the calendar, if the parties appear the examination must proceed at once, unless a continuance is ordered by the court. If the person ordered to appear does appear and the moving party fails to appear, the proceedings may, at the discretion of the court, be continued to another day or be dismissed without cost and with such additional orders as are appropriate. Appropriate orders may include an order that no future order will issue as to the person who did appear except upon a showing of new facts and a satisfactory explanation being made to the court for the moving party's failure to appear. If such future order is granted, it will be made on such terms and conditions as the court deems just and appropriate.

If the moving party does not appear and the court deems it appropriate to continue the examination to a future date, and on that day the moving party does not appear, the proceedings must be dismissed without costs being awarded to the party who secured the order.

D. Nonappearance of Party to be Examined. If the party to be examined fails to appear at the time and place set for examination, a bench warrant may issue requiring attendance forthwith, provided the moving party complies with subdivision "E" of this rule within 30 days after the examination date.

A warrant will not be issued for the arrest of a person who failed to appear in court as directed in such order if the order with the return of service thereon has not been filed with the clerk of the court within the time specified herein, unless so ordered.

E. Bench Warrants of Attachment. If a judgment debtor fails to appear for hearing as ordered, the judgment creditor requests a bench warrant of attachment, and the court orders a bench warrant of attachment, the judgment creditor must file with the civil business office the following items before the bench warrant of attachment will issue:

1. Sheriff's instructions, fully completed, stating the location where the defendant may be served (forms available in sheriff's office, original only required);

2. Check made payable to the "Sheriff of San Diego" for service fees; and

3. A bench warrant of attachment form.

The above documents must be filed within 30 days of the order directing or granting the issuance of the bench warrant of attachment. If the documents are not filed within 30 days following the order for issuance of the bench warrant of attachment, the moving party must apply to the court for an order for appearance of judgment debtor.

F. Continuances. One or more continuances of a judgment debtor examination may be allowed upon stipulation of all parties or their attorneys joined in by the person or entity ordered to appear and approved by the court, or upon good cause shown.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Renum. 1/1/2006)

Rule 2.4.2

Unlawful Detainer Proceedings

A. Order to Show Cause Regarding Dismissal. Consistent with the policy set forth under rule 2.1.1, a show cause hearing regarding dismissal will be set when the complaint is filed and will be held approximately 45 days after the filing of the complaint unless:

1. The case has been set for trial;

2. The case has been designated as a general civil matter because possession is no longer in issue (Civ. Code, § 1952.3) and the case is not entitled to precedence (Code Civ. Proc., § 1179a);

3. A disposition has been entered (a dismissal, judgment, notice of settlement, or transfer terminates or disposes of the case as to all defendants named in the action); or

4. A conditional settlement has been filed.

There will be no case management conferences in unlawful detainer cases, unless re-designated a general civil matter or unless specifically set by order of the court

B. Trial Setting. In unlimited unlawful detainer cases, it is the responsibility of the parties to notify the court that they are entitled to an expedited trial. In limited unlawful detainer cases, there is a mandatory Judicial Council form that must be filled out and submitted to request that the case be set for trial. In addition to filling out the front of the mandatory form, the proof of service on the reverse side of the form must be filled out and submitted after the opposing party has been served with the request or counter-request to set the case for trial. A counter-request must be filed within 5 days of the filing of the trial request. The mandatory form to be used for a request or counter-request to set a case for trial is Judicial Council form number UD-150, and may be obtained by going to the Judicial Council website at http://www.courtinfo.ca.gov

C. Judgment for Money Damages after Judgment for Possession of the Premises. When the plaintiff obtains a default judgment for possession of the premises, the case may be calendared for further hearing. In the alternative, a plaintiff may file an application along with the necessary declarations for a default money judgment including attorney fees and costs or may file a dismissal without prejudice as to the money damages**.** After restitution of possession of the premises to plaintiff, plaintiff's failure to seek a money judgment or to file a dismissal may result in the court calendaring a hearing for the plaintiff to show cause why the case should not be dismissed.

D. Redesignation of Case when Possession is No Longer in Issue (Civ. Code, § 1952.3). The plaintiff must immediately notify the court when possession is no longer in issue and request the matter be redesignated as an unlimited or limited civil matter. The case will be monitored as follows:

1. If the defendant has not filed an answer, the case will be monitored for timely entry of default; or

2. If the defendant has filed an answer, the case will be set for a case management conference.

(Adopted 1/1/1998; Rev. 1/1/2001; Renum. 7/1/2001; Rev. 1/1/2003; Rev. 1/1/2004; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 2.4.3

Uninsured/Underinsured Motorist Actions

If a complaint includes an uninsured/underinsured motorist claim as defined under section 68609.5 of the Government Code and section 11580.2 of the Insurance Code, plaintiff must file a declaration stating the case is an uninsured/underinsured motorist case, the name of insurance carrier, and amount of coverage. The court will suspend the time requirements and the action will be stayed for a period of 180 days. Any party who claims to be exempt from the stay and who desires to further prosecute the action must object by noticed motion in the stayed action. Upon the expiration of the 180-day stay period, the action will be dismissed unless, upon noticed motion, good cause is shown to the contrary. If such motion is granted, the stay may be extended, but such an extension will not exceed 180 days.

In addition to the above, if a complaint includes an uninsured/underinsured motorist claim as defined under section 68609.5 of the Government Code and section 11580.2 of the Insurance Code, plaintiff must file a Certificate of Progress so advising the court within 60 calendar days of the filing of the complaint. The certificate must indicate whether a stay of the action or a portion of the action is requested in accordance with rule 2.1.13, and/or whether the case will proceed against all other appearing defendants.

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2000; Rev. 1/1/2001; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.4.4

Small Claims

To facilitate compliance with the Standards of Judicial Administration relating to case disposition time standards and delay reduction, a notice will be given to the plaintiff by the clerk at the time of filing a small claims case advising the following: 1) Failure to appear at the scheduled hearing may result in the case being dismissed; 2) If the defendant(s) is (are) not served by the date of trial and the plaintiff elects not to reset the matter, the case will be dismissed without prejudice when the case is called. Requests for resetting may be made at the time of trial or before. If the case is dismissed on the date of trial for lack of service and resetting, and the plaintiff wishes to further litigate the matter, the case must be refiled and a new filing fee paid.

A. Filings

East County Division: All filings pertaining to small claims actions must be filed at 250 E. Main Street, El Cajon, CA 92020, or in the Ramona Branch, 1428 Montecito Road, Ramona, CA 92065.

North County Division: All filings pertaining to small claims actions must be filed at the North County Regional Center, 325 S. Melrose Drive, Suite 390, Vista, CA 92083.

Central Division: All filings pertaining to small claims actions must be filed at the Kearny Mesa Facility, 8950 Clairemont Mesa Boulevard, San Diego, CA 92123. Small claims trials are heard at this facility.

South County Division: All filings pertaining to small claims actions must be filed at 500 Third Avenue, Chula Vista, CA 91910.

B. Reassignment. If the parties do not stipulate to one commissioner or temporary judge, the matter will be set for hearing before another commissioner, temporary judge, or judge. If an alternate temporary judge, commissioner, or judge is unavailable in the small claims department at any given session, the matter may be continued by the clerk.

C. Proof of Service. Proof of service must be filed not later than five days before the date set for hearing. Failure to timely file proof of service may cause the court to remove the hearing from the calendar, or dismiss the case without prejudice.

D. Appeal Procedures. In addition to the requirements of the Code of Civil Procedure and the California Rules of Court, the following procedure applies in small claims appeals:

Parties are not required to file trial briefs in small claims appeals. However, if a party feels a brief is necessary, it must be filed at least five court days prior to the hearing and must not exceed five pages in length.

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.4.5

Eminent Domain

A. Case Management Conference. Absent the granting of a motion to treat an eminent domain proceeding as a complex case or a motion to enlarge time, it will be set for a case management conference approximately 180 days after the filing of the complaint. By the date of this case management conference, all parties must either have

appeared, been defaulted, disclaimed any interest in the subject property, or been dismissed, and the case must be ready to be placed on the civil active list. A Case Management Statement must be completed by all parties and filed with the court at the time of this case management conference. The parties may stipulate to ADR or a temporary judge at that time. A trial date will be set not sooner than 120 days after the case is "at issue."

B. Settlement Conference. A settlement conference on the issue of compensation will be set 15 days before the trial date if the parties have complied with the settlement conference rules. The plaintiff must attend the conference with its negotiating agent, and all defendants who claim compensation must be present except lienholders, if any.

C. Trial Readiness Conference. A trial readiness conference on the issue of compensation will be set 10 days before the trial date. The plaintiff and other parties presenting valuation testimony at the trial must meet prior to the scheduled conference and complete, sign, and file a joint trial readiness conference statement in the form provided by the court. The completed statement must be presented to the judge at the scheduled conference.
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.4.6

Minors/Incompetents/Conservatees

A. Guardians ad Litem. As provided in the Code of Civil Procedure, a guardian ad litem must be appointed for a minor, incompetent person, or a person for whom a conservator has been appointed. Due to potential conflicts of interest, parents asserting individual claims or defenses may not serve as guardians ad litem for their minor children, absent a court order to the contrary. Petitions for appointment of a guardian ad litem must be filed at the same time as the underlying complaint is filed.

B. Petitions to Compromise the Claim of a Minor. A petition to compromise claims on behalf of minors may be filed in a limited civil case only if an action is already pending in that case. Otherwise, it must be filed as an unlimited civil case. The petition must be filed and set for hearing in the department designated by the presiding or supervising department unless the case has been assigned to a judge or independent calendar department, in which case the petition must be filed and heard in that department. The person compromising the claim on behalf of the minor and the minor must be in attendance at the hearing of the petition, unless the court orders otherwise.

At the time of the hearing, the court will determine the amount of costs, expenses, and attorney's fees to be allowed from the proceeds of the settlement. Absent extraordinary circumstances, attorney's fees will not exceed 25% of the gross proceeds of the settlement.

The funds must be disbursed in accordance with the order approving the settlement. It is the duty of the attorney to ensure that the minor's funds are deposited in accordance with the court order referenced above. Attorney's fees are not due or payable unless and until the money is deposited in the blocked account and a receipt executed by the depository is returned to the court.

C. Trusts. In all cases where settlement of any civil proceeding contemplates the creation of a trust with proceeds from a settlement, including trusts for the benefit of minors and incompetent parties or special needs trusts, as authorized by Probate Code section 3600 et seq., the following provisions apply:

1. After the approval of the settlement by the judge in the civil proceeding and the hearing thereon as provided in Code of Civil Procedure section 664.6, if necessary, but prior to the payment or transmittal of the proceeds of the settlement agreement to plaintiff's representatives, counsel for plaintiff must submit a copy of the proposed trust agreement to the trial court judge before whom the settlement agreement was presented and approved. The trial judge will transmit the proposed trust agreement to the probate court for review and approval.

2. Following review of the trust agreement, the probate judge will advise the trial court judge in writing, specifying the required changes, if any, in the proposed trust agreement, together with the amount of trustee's bond to be posted, if any, and whether or not the trust should thereafter be subject to supervision by the probate court as provided in Probate Code section 17200 et seq. When the required changes have been made to the proposed trust agreement, the trial judge will sign an appropriate order directing the trustee to post the indicated bond before authorizing the payment or transmittal of the settlement proceeds to the trustee to fund the trust, and order the trustee, where necessary, to file a petition in the probate court as described in subdivision 3 below. The trial judge will forward a file stamped copy of this order and the bond to the probate court.

3. If the order of the trial court provides that the trust will be subject to the supervision of the probate court, the trustee must file a petition in the probate court subjecting the trust to the jurisdiction of the probate court as authorized by Probate Code section 17000, entitled "Petition for Review of Compliance with Order pursuant to Probate Code section 3602 or 3604," and cause that petition to be set for noticed hearing. Such petition must be the first petition in a new probate proceeding and a full "first petition" filing fee will be paid.
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Rev. 1/1/2004; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.4.7

"Other" Civil Actions

Civil actions classified as "other," including but not limited to petitions for extraordinary relief and small claims appeals, will be noticed for dismissal 180 days after the filing of the first document conferring court jurisdiction, unless the parties appear ex parte in the appropriate department and obtain an extension of time. The court, on its own motion, may at any time reclassify such cases as "unlimited civil." Cases designated as "eminent domain" must follow the procedures under rule 2.4.5.

(Adopted 1/1/1998; Renum. 7/1/2001; Rev. 1/1/2004; Renum. 1/1/2006)

Rule 2.4.8

Extraordinary Writs

A. In seeking mandamus or prohibition relief, it is not necessary to obtain an alternative writ (Code Civ. Proc., § 1088). The noticed motion procedure should be used whenever possible.

B. If an alternative writ is sought in the first instance, the petition must be filed in the civil business office and the petitioner must appear ex parte to seek issuance of an order to show cause.

C. Petitions for extraordinary writs in limited civil, misdemeanor and infraction cases that name the Superior Court as the respondent are governed by Division VII rules (Appellate).

D. Petitions for extraordinary writs arising out of all other criminal cases are governed by Division III rules (Criminal).

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 2.4.9

EADACPA Proceedings

A. When a civil action has been filed which cites the "Elder Abuse and Dependent Adult Civil Protection Act" (EADACPA), pursuant to Welfare & Institution Code section 15600 et seq., that action will be transferred to the Probate Court for litigation if the following apply:

1. A conservator of the person and/or estate has been appointed for the plaintiff and has qualified prior to the initiation of the action for abuse. (Welf. & Inst. Code, § 15657.3, subd. (a).)

2. No good cause is shown to retain the action in the Civil Court. (Welf. & Inst. Code, § 15657.3, subd. (b).) The action will remain as a civil case file and civil Rules of Court and procedures will apply.

B. Where a conservator of the person and/or estate has been appointed, any EADACPA action can also be filed by petition or complaint in the Probate Court and will be part of the conservatorship case file. It will be processed like a civil action, with the requirements of a summons and responsive pleadings.

1. The title of the case must be a dual title "In the Matter of the Conservatorship of (name)" and below that title the civil title, "(Name of conservatee) Through (name of conservator), Conservator of (Person or Estate) v. (name(s)) (of) Defendant(s)".

2. Although a civil summons will be issued, the petition or complaint will be set for hearing at least 40 days away, on a regular probate calendar, and that first hearing will be handled as a review hearing.

a. A Certificate of Service of summons or Certificate of Progress showing inability to serve must be filed prior to the hearing.

b. Proof of service of probate notices pursuant to applicable statutes must be filed prior to the review hearing.

3. The petition or complaint will thereafter be handled pursuant to probate "fast track" rules for contested matters pursuant to Probate Rules, Division IV, Chapter 22.

4. If a jury trial is demanded, or if the time estimate exceeds what Probate Court has the ability to hear, and the matter does not settle, at the Joint Disposition conference, the litigants will be instructed to contact the independent calendar clerk for assignment to a civil court.

5. If the conservatee dies while an action is pending in the Probate Court, the Probate Court will retain jurisdiction of the action in the conservatorship case file. (Prob. Code, § 2630.)

a. A personal representative or processor in interest to the conservatee must substitute in as plaintiff. (Welf. & Inst. Code, § 15657.3.)

b. A first appearance fee for the substituted party will be required.

(Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 2.4.10

Collection Actions

Case management in Collection Actions is handled in accordance with the California Rules of Court, rules 3.740 and 3.741.

(Adopted 1/1/2009)

CHAPTER 5
MISCELLANEOUS PROVISIONS

Rule 2.5.1

Appointment of Counsel Under the Servicemembers Civil Relief Act

If the plaintiff or defendant in an action is in the military service, the Servicemembers Civil Relief Act ("the Act") may apply. (50 U.S.C. Appen. § 501 et seq.)

A. If the defendant servicemember has not made an appearance:

1. The court may not enter a default judgment or an order of default on the merits unless the court appoints an attorney for the defendant. Default means any order, ruling or decree which is adverse to the servicemember's interest. Actions taken by the appointed attorney do not bind the servicemember or waive any defenses (including lack of jurisdiction) unless the servicemember has authorized action.

2. The court must grant a 90-day or longer initial stay if there may be a defense to the proceeding which the servicemember cannot present without being present, or if after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

3. After the 90-day stay, the court must appoint an attorney to represent the servicemember in the action or proceeding if it refuses to grant an additional stay.

4. If the court does enter a default, plaintiff may be required to file a bond to indemnify the responding servicemember if the order is later set aside.

5. If the court enters a default judgment during a period of military service (or within 60 days after the end of service), the court must reopen the judgment to allow the servicemember to defend if:

a. The service member was materially affected due to military service in asserting a defense, and

b. The service member has a meritorious or legal defense to the action or some part of it, so long as the application is filed within 90 days after the end of military service.

B. If the plaintiff or defendant servicemember has received notice of the proceeding:

1. The court must grant a minimum 90-day stay of the proceedings if the servicemember communicates that military duty requirements materially affect the servicemember's ability to appear, stating a date when the servicemember will be available, and if the servicemember's commanding officer communicates that the servicemember's current military duties prevent an appearance and leave is not authorized at the time of the hearing.

2. The service member may apply for an additional stay in the same manner as the original request. If the court refuses to grant the additional stay, the court must appoint counsel to represent the servicemember in the proceeding.

C. Miscellaneous.

1. Appointments of counsel under the Act are pro bono.

2. Any individual holding a power of attorney from the servicemember may appear in court on his or her behalf to request a stay or additional stay.

3. A request for a stay does not constitute a general appearance for jurisdictional purposes or a waiver of substantive or procedural defenses.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 2.5.2

Public Inspection of Files

A. File Review in the Civil Business Office. Civil files may be reviewed in the civil business office of each division in accordance with the California Rules of Court and the following:

1. Any person requesting to view a file may be required to submit a valid California driver's license or other photo identification card;

2. Cases must be requested by case number;

3. If requested in nonsequential order, a maximum of 10 cases per day will be pulled by the clerk;

4. If requested in sequential order, a maximum of 50 cases per day will be pulled by the clerk;

5. Unlawful detainer case files may be requested by case number no sooner than 60 days following the date the complaint is filed pursuant to section 1161.2 of the Code of Civil Procedure; and

6. No random searches will be accommodated.

B. Access to the Civil Business Office for File Review. Any person who desires access to the secured area of the civil business office to review case files must comply with the following:

1. Submit an Application for Access into the Clerk's Office to Research Court Records;

2. Submit a valid California driver's license or photo identification card and, if applicable, a copy of a valid business license;

3. Pass a background check.

Access will be denied if the applicant has any outstanding warrants, is a party to a pending civil or small claims action, has an open misdemeanor or felony case, is currently on probation for a misdemeanor or felony conviction, or upon order of the court.

Notification of approval or denial of access will be mailed to the applicant at the address shown in the application within 30 days. Applicants who are denied access will be permitted to inspect cases in the same manner as set forth under subdivision "A" of this rule.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2004; Renum. 1/1/2006)

Rule 2.5.3

Fax Filings

A. Agency Fax Filings. The court will accept for filing all documents submitted by fax filing agencies, except those specified in the California Rules of Court.

B. Direct Fax Filings - Limited Civil Cases. Any document not required to be accompanied by a fee may be filed directly by fax. Direct fax filing numbers may be obtained by contacting the appropriate business office.

The business office will not provide conformed copies unless a request is submitted to the court with a self-addressed, stamped envelope, and $.50 per page of the faxed document.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.5.4

Procedure Upon Death of Plaintiff

Within 10 calendar days of receiving notice of the death of a plaintiff, counsel for the plaintiff must file with the court and serve upon all other parties in the action, a Notice of Death of the Plaintiff.

Upon receipt of a Notice of Death of the Plaintiff, the court will suspend future consideration of the case for 90 calendar days. The case will be placed on a dismissal calendar to be heard 90 days after the notice is filed unless:

A. The original case is consolidated with a new wrongful death action;,

B. Good cause is shown upon written noticed motion to extend the time for dismissal; or

C. Plaintiff's counsel moves to have the original action restored to active status.

(Adopted 1/1/1998; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.5.5

Receivers

The court may appoint a receiver pursuant to statute or in conformance with equity practice. Appointment of a receiver may be made either by order after a show cause hearing, by order after a noticed motion for appointment of a receiver, or by ex parte order for appointment of a receiver.

Ex parte appointment of a receiver is a drastic remedy used only with extreme caution in cases of great emergency when it is shown that the party seeking appointment of a receiver will suffer irreparable harm before a noticed hearing can be held and that no less drastic remedy, such as a temporary restraining order, will prevent the threatened harm. Appointment of a receiver ex parte is contingent upon the filing of an applicant's bond (Code Civ. Proc., § 566) and a receiver's bond (Code Civ. Proc., § 567). The receiver's bond will be fixed in an amount sufficient to cover the value of transferable personal property and cash which the receiver may possess at any time during the expected period of the receivership. Confirmation of the ex parte appointment of a receiver must be done in conformance with the provisions of the California Rules of Court.

The proposed order appointing a receiver must set forth the powers of the receiver and shall designate as precisely as possible what real and personal property will be subject to the receivership estate. The powers of the receiver are limited to those designated by statute and set out in the appointing order. If there is any doubt as to the receiver's authority to take certain action, he or she should petition the court for instructions. The proposed order will also specify the rate of compensation of the receiver.

Employment of counsel by the receiver requires the approval of the court. In this regard, the application must comply with the provisions of the California Rules of Court, rule 3.1180. In addition, the application and the proposed order must set forth the attorney's hourly rate and a good faith estimate of the number of hours the attorney will expend on behalf of the receivership estate.

If the receiver intends to employ a property management company, the proposed order must specify its rate of compensation. If the proposed property management company is affiliated with the receiver, full disclosure of the affiliation must be made to the parties and the court.

Any money collected by the receiver and not expended pursuant to the receiver's duties must be held in the receivership estate until court approval of the receiver's final report and discharge of the receiver, except as otherwise ordered by the court.

The receiver is an agent of the court, not of any party to the litigation. The receiver is neutral, acts for the benefit of all who may have an interest in the receivership property, and holds assets for the court, not the plaintiff.

Accountings filed in receivership proceedings must set forth the beginning and ending dates of the accounting period and contain a summary of income, expenses, and capital outlays on a month-by-month basis. Receiver's fees and administrative expenses, including fees and costs of property managers, accountants and/or attorneys previously authorized by the court must be included in the summary, but separately stated. The summary must be supported by appropriate itemized schedules and evidentiary foundation.

This rule is not an exhaustive treatment of receivership law and procedure. For applicable law, also see sections 564-570 of the Code of Civil Procedure and the California Rules of Court, rules 3.1175-3.1184.
(Adopted 1/1/1998; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 2.5.6

Confidentiality Agreements, Protective Orders, Sealed Documents

It is the policy of the court that confidentiality agreements and protective orders are disfavored and should be recognized and approved by the court only when there is a genuine trade secret or privilege to be protected.

A. Requests to approve a confidentiality agreement that involves documents submitted to or filed with the court, such requests must be made pursuant to rules 2.550–2.585 of the California Rules of Court.

B. To the extent any request to seal court records falls outside the scope of rules 2.550–2.585 of the California Rules of Court and is not covered by a specific statute, rules 2.550–2.585 must be followed as closely as is practicable.
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. & Renum. 1/1/2006)

Rule 2.5.7

Daily Transcripts of Proceedings

A party in a civil action may request a daily transcript of the proceedings. The court may grant the request if such will not disrupt the regular assignment of court reporters. If the request is granted, the requesting party must deposit with the clerk of the court each day a sum equal to the daily cost of the salary and benefits for court reporters in this county under existing law, to compensate the requisite additional reporter. Current information regarding such cost will be available in the office of the executive officer or assistant executive officer of each division.
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.5.8

Depositions

No deposition may be noticed for taking before the court, or in any room or quarters under the control of the court, without the express approval in writing of the presiding judge.

Any deposition transcript returned to the court may be opened by the clerk at the request of either party, and the clerk will note thereon at whose request it was opened, and file the deposition transcript on the day it was received by the clerk.
(Adopted 1/1/1998; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 2.5.9

Bankruptcy

All parties to an action must promptly make it known in writing to the court if during the litigation they become debtors in bankruptcy or if, to their knowledge, other parties to the litigation become debtors in bankruptcy.
(Adopted 1/1/1998; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.5.10

Telephonic Appearances

In accordance with the provisions of California Rules of Court, rule 3.670(l), the court designates CourtCall, LLC, as the provider that must be used for telephonic court appearances. A party that intends to appear telephonically for a hearing listed in the rule must provide notice as specified in California Rules of Court, rule 3.670(g). The party must also arrange the appearance with CourtCall, including following any notice requirements and payment of fees as required by CourtCall. Information on arranging an appearance and payment of fees may be obtained directly from CourtCall at (888) 882-6878.

The court may deny a request to appear telephonically and require the parties to appear in person pursuant to California Rules of Court, rule 3.670(h).
(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 2.5.11

Default Attorney Fee Schedule

Whenever the obligation sued upon provides for the recovery of a reasonable attorney fee, the fee in each default case may be fixed pursuant to the following schedule:

PRINCIPAL AMOUNT	FEES ALLOWED
$-0- to $300	$ 100
301 to 400	125
401 to 500	150
501 to 700	175
701 to 900	200
901 to 1,000	250
1,001 to 1,500	300
1,501 to 2,000	375
2,001 to 2,500	450
2,501 to 3,000	525
3,001 to 3,500	600
3,501 to 4,000	675
4,001 to 4,500	750
4,501 to 5,000	825
5,001 to 6,000	900
6,001 to 7,000	1,000
7,001 to 8,000	1,100
8,001 to 9,000	1,200
9,001 to 10,000	1,300
10,001 to 12,500	1,400
12,501 to 15,000	1,500
15,001 to 17,500	1,600
17,501 to 20,000	1,700
20,001 to 22,500	1,800
22,501 to 25,000	1,900
Over 25,000	Add 2% of the next 25,000
Over 50,000	Add 1% of the next 50,000
Over 100,000	Add .5%

In any case where an attorney claims he or she is entitled to a fee in excess of any of the above amounts, the attorney may apply to the court therefor and present proof to support the claim. The court will determine the reasonable fee amount according to proof.

In contested matters, the court will determine the reasonable attorney fees as proved by the prevailing party after trial in accordance with section 1021 et seq. of the Code of Civil Procedure, sections 1717 and 1717.5 of the Civil Code, and the California Rules of Court, rule 3.1702.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.5.12

Elisors

Where one of the parties will not or cannot execute a document necessary to carry out a court order, the clerk of the court, or his or her authorized representative or designee may be appointed as an elisor to sign the document. An application for appointment of an elisor may be made ex parte. When applying for an appointment of an elisor, the application and proposed order must designate "The clerk of the Court or His/Her Designee" as the elisor and indicate for whom the elisor is being appointed. The application must not set forth a specific court employee. The declaration supporting the application must include specific facts establishing the necessity for the appointment of the elisor. If the elisor is signing documents requiring notarization, the applicant must arrange for a notary public to be present when the elisor signs the document(s).

(Adopted 1/1/1999; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.5.13

Sanctions

A. If any counsel, a party represented by counsel, or a party in pro per, fails to comply with any of the requirements of Division II of the San Diego Superior Court Rules, the court, on motion of a party or on its own

motion, may strike all or any part of any pleadings of that party; or dismiss the action or proceeding or any part thereof; or enter a judgment by default against that party; or impose other penalties of a lesser nature or otherwise provided by law; and may order that party or his or her counsel to pay to the moving party the reasonable expenses in making the motion, including reasonable attorney fees.

B. If a failure to comply with the rules in Division II is the responsibility of counsel and not of the party, any penalty must be imposed on counsel and must not adversely affect the party's cause of action or defense thereto. (Adopted 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006)

APPENDIX A

Deleted

(Adopted 1/1/1998; Rev. 7/1/2001; Rev.7/1/2003; Rev. 1/1/2006; Rev. 1/1/2008; Del. 1/1/2009)

APPENDIX B

Deleted

(Adopted 1/1/1998; Rev. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2007; Del. 1/1/2009)

DIVISION III:
CRIMINAL

CHAPTER 1
GENERAL

Rule 3.1.1

Police Reports Containing Confidential Personal Information

In accordance with Penal Code section 964 and the public policy set forth therein, prosecutors and law enforcement agencies should not submit police reports, arrest reports or investigative reports containing "confidential personal information" (as defined in subd. (b) of Pen. Code, § 964) of victims or witnesses to the court in support of a criminal complaint, indictment, or information; or in support of a search or arrest warrant. Rather, prosecutors and law enforcement agencies should present the court with written declarations from law enforcement officers that are devoid of this confidential personal information.

In the alternative to providing declarations to the court, the parties may submit copies of police reports, arrest reports or investigative reports that are redacted of all "confidential personal information" of victims and/or witnesses. The redacted copies of these reports provided to the court must be attached to a declaration attesting to the fact that all "confidential personal information" of victims and/or witnesses has been effectively redacted from the reports.

All agencies should bear in mind that the court will not undertake the task of redacting any confidential personal information of victims or witnesses from documents submitted for the court's consideration. Rather, the burden to ensure that this information is not included within any documents presented falls squarely on the agencies preparing and presenting them to the court. In this respect, the court may exercise its discretion to accept or reject a police, arrest or investigative report containing confidential personal information that is submitted in support of a criminal complaint, indictment, or information; or in support of a search or arrest warrant.

(Adopted 1/1/2006)

Rule 3.1.2

Arraignment Options on Misdemeanors and Infractions

Attorneys appearing in propria persona or who are retained to represent defendants who are not in custody and who are charged with misdemeanors or infractions may, in lieu of a court appearance, arraign matters informally if the attorney, as authorized by the defendant, enters a plea of not guilty and waives time for trial. The clerk will assign settlement conference, trial readiness conference, and trial dates as directed by the court.

A. Counter Arraignments. The attorney must personally appear in the clerk's office.

B. Fax Arraignments. Forms and rules governing this procedure may be obtained from the clerk's office or the court's website.

C. Exceptions. These arraignment options are not available for defendants charged with child abuse or domestic violence countywide or cases prosecuted by consumer fraud and code enforcement divisions of the San Diego City Attorney's Office.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006; Rev. 1/1/2007)

Rule 3.1.3

Failure to Appear in Misdemeanor "Notify Letter" Cases

If a defendant fails to appear in court for arraignment after a notify letter has been issued by the prosecutor in a misdemeanor case, the court will set a date 90 days in the future by which time the prosecutor will decide if he or she will file an Affidavit In Support of Arrest Warrant. If the prosecutor files an affidavit within this 90-day period, the case will be referred to the designated criminal department for issuance of a warrant. If no affidavit is filed within 90 days, the case will be dismissed for lack of prosecution unless the prosecutor petitions the court within this 90-day period and shows good cause for an extension of time to either send a notify letter or to file an Affidavit in Support of Arrest Warrant.

This rule does not apply to domestic violence, drug court and Penal Code section 1210 et seq. cases.

(Adopted 1/1/2006)

Rule 3.1.4

A. Bail Reductions Or Increases. When bail has been set by a judge, all requests for an increase or reduction of said bail must be made to that judge, except that any judge to whom a criminal matter is assigned for any stage of the proceedings may, in his or her discretion, on the court's own motion, or on the motion of any party, modify the amount of bail set.

B. Confidentiality of Pretrial Services Records and Information. Information supplied by a defendant to a representative of the San Diego Superior Court Pretrial Services Department during the defendant's initial interview or subsequent contacts, or information obtained by Pretrial Services as a result of the interview or subsequent contacts, will be deemed confidential and will not be subject to subpoena or to disclosure, and will not subject any employee or attaché of the Pretrial Services Department to subpoena, with the following exceptions:

1. Information relevant to the imposition of conditions of release must be presented to the court, the prosecutor, the defendant, and the defendant's attorney, on a standardized form when the court is considering what conditions of release to impose, and if the information given is false or misleading, it may be used for prosecution or impeachment;

2. Information concerning compliance with any conditions of release imposed by the court must be furnished to the court, the prosecutor, the defendant and the defendant's attorney, for prosecution, impeachment, or for consideration of modification of conditions of release;

3. As otherwise ordered by the court in the interest of justice, upon noticed motion of the party seeking disclosure and a showing of good cause.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 3.1.5

Trial by Declaration

A defendant may elect to have a trial by written declaration as provided under Vehicle Code section 40902 on an alleged infraction, unless the offense involves an accident, or alcohol or drugs pursuant to Article 2, Chapter 12, Division 11 of the Vehicle Code.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 3.1.6

Juror Questionnaires

If juror questionnaires are proposed by counsel, they must be accompanied by a Juror Questionnaire Cover Sheet which will be provided by the court.

(Adopted 1/1/1999; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 3.1.7

Prohibition Against Ex Parte Contacts

The court will not entertain or engage in any ex parte communications with any party or a party's attorney regarding the merits of a pending criminal case, a motion, a petition for writ of habeas corpus, or an extraordinary writ. However, a party or a party's attorney and the court's staff attorney may discuss procedural matters ex parte.

(Rev. & Renum. 1/1/2006)

CHAPTER 2
MOTIONS

Rule 3.2.1

General Requirements

A. Notice of Motion. All notices of motion and notices of opposition thereto must be in writing and must prominently display on the first page the trial readiness conference and trial dates, a time estimate for the motion hearing, and the number of witnesses to be called at the hearing, if any.

B. Time for Service (except for motions to suppress heard at the preliminary examination).

1. All moving papers must be served on the opposing party at least 15 court days before the time appointed for the hearing.

2. All papers opposing the motion must be filed and served at least 5 court days before the time appointed for the hearing.

3. All reply papers must be filed and served at least 2 court days before the time appointed for the hearing.

4. Proofs of service of the moving papers must be filed no later than 5 calendar days before the time appointed for hearing.

C. Points and Authorities.

1. A memorandum of points and authorities must include a statement of the case and a statement of facts setting forth all procedural and factual matters relevant to the issue presented.

2. The memorandum must clearly specify the factual and legal issues raised and the specific legal authority relied upon for the motion.

3. Only the factual and legal issues set forth in the memorandum will be considered in the ruling on the motion unless it is established that the new issues were not reasonably discoverable before the motion was filed.

4. Failure of the moving party to serve and file points and authorities within the time permitted without good cause may be considered by the court as an admission that the motion is without merit.

5. Except as to motions to suppress heard at the preliminary examination, failure of the responding party to serve and file points and authorities within the time permitted without good cause may be considered by the court as an admission that the motion is meritorious.

D. Abandonment of Motions. Any party intending to abandon a motion already filed must immediately notify opposing counsel and the clerk of the department in which the motion is to be heard, and must also notify the clerk immediately if the case is disposed of by plea prior to the hearing or if the proceedings are suspended pursuant to Penal Code section 1368.

E. Concession That Motion is Meritorious. If the responding party elects not to oppose the motion, respondent must immediately notify opposing counsel and the clerk of the department in which the motion is to be heard.

F. Trial Department Motions. No party may file in any law and motion department a motion which must be decided by the trial judge. Such motions include, but are not limited to, motions to suppress based on confessions or admissions which are not a product of alleged Fourth Amendment violations (e.g., alleged violations of the Fifth and Sixth Amendments, such as Miranda violations, involuntary confessions, or denial of counsel), Trombetta/Youngblood motions, and severance motions resting on evidentiary considerations.

G. Setting of Motions. The clerk in the department where the pretrial motion is filed will set a date for hearing of the motion at least 15 court days after the motion is filed.

H. Length of Points and Authorities. No opening or responding memorandum of points and authorities exceeding 15 pages will be filed, absent an order from the judge of the court in which the motion is calendared. Such an order will be granted only upon a written application including a declaration setting forth good cause for the order.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 3.2.2

Additional Requirements - Special Motions

A. Motions to Dismiss or Strike (Pen. Code, § 995) and Demurrers.

1. Defendant must attach a copy of the current complaint, information, or indictment to the motion.

2. The notice of motion must clearly state whether the defendant seeks to dismiss, strike or demur to the entire complaint, information or indictment. If the defendant does not challenge the entire charging document, the notice of motion must set forth the counts, enhancements, allegations, special circumstances, or other aspects of the charging document that are being challenged.

B. Discovery Motions. In accordance with Penal Code section 1054 et seq., discovery motions must include a declaration by counsel, under penalty of perjury, setting forth the previous oral and written efforts to obtain discovery by cooperative and informal means, and showing how the opposing party has failed to comply with Penal Code section 1054.1 or 1054.3. The motion must be limited to the disputed items, or class of items, listed in the declaration.

C. Suppression Motions (Pen. Code, § 1538.5).

1. Defendant must attach a copy of the current complaint, information, or indictment to the motion.

2. If relevant to the motion, the defendant must attach to the motion legible copies of the search warrant, affidavit in support of the warrant, and receipt and inventory of property.

3. The motion must include a list of specific items to be suppressed. A general request to suppress "all items seized" is not sufficient and may be deemed an abandonment of the motion. Only listed

items will be considered by the court for suppression or return, unless any newly identified item could not reasonably be specified prior to the hearing.

4. Motions Made at Felony Preliminary Examination. Motions made at a felony preliminary examination must comply with Penal Code section 1538.5, subdivision (f). Defendant may, but is not required to, file a reply brief. Proofs of service must be filed by the date of the hearing.

5. Motions Made in All Other Cases.

a. Defendant must specify the precise grounds for suppression of the evidence, including the inadequacy of any justification for the search and seizure. If defendant's motion alleges the lack of a warrant as the sole basis for suppression, any opposition filed by the People should specify the justification for the warrantless search. The defendant should then file a reply specifying the inadequacies of the justification. The reply brief must be filed and personally served at least two court days prior to the hearing. The raising of new issues in the reply may constitute good cause for continuance to permit the prosecution to prepare for the hearing.

b. A motion brought following a felony preliminary examination must state whether the party stipulates to the preliminary examination transcript, whether the motion was raised at the preliminary examination, and, if so, must specify what factual findings and legal conclusions were made by the magistrate. Failure to indicate whether or not the party stipulates to the preliminary examination transcript will be deemed a stipulation to the admission of the transcript.

(Adopted 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2007)

Rule 3.2.3

Additional Requirements - Felonies

A. At the post-bindover arraignment on the information or arraignment on an indictment, the judge will set a filing deadline for all pretrial motions which will be 21 calendar days after the arraignment or such other date as the judge may, for good cause, assign.

B. All such motions, including motions to join in motions, must be filed no later than the close of business on the assigned date.

C. No moving papers will be accepted thereafter for filing except by order of the supervising criminal judge extending time or granting relief from default.

(Adopted 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 3.2.4

Motions Settings - Misdemeanors and Infractions

Except where there is an order setting a hearing date, the moving party may request a date for the hearing. Dates are subject to confirmation by the clerk's office and mandatory time provisions of statutes, the California Rules of Court, and these rules.

(Adopted 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 3.2.5

Discovery Motions for Jury Services Information and/or Related Motions to Challenge Jury Selection System.

A. All discovery motions for jury services information and/or related motions to challenge the jury selection system must be filed in the department of the Supervising Criminal Judge, located in the County Courthouse downtown, whether or not the criminal case has been assigned to a judge for all purposes.

B. Moving papers relating to such motions must identify arguments as to why the jury selection system is defective.

C. All moving papers relating to such motions must be separately served on the Jury Commissioner or Manager of Jury Services, the same date the moving papers are served on responding party. Proof of service must be filed with the original moving papers.

D. The Jury Commissioner, Manager of Jury Services, or court employees whose primary employment is in the Jury Services Office will not be called to testify at a hearing on a discovery motion for jury services information and/or related motions to challenge the jury selection system unless given three court days prior notice.

E. For good cause shown, the Supervising Criminal Judge may waive any of the above requirements.

(Adopted 1/1/2008)

CHAPTER 3
HABEAS CORPUS AND ERROR CORAM NOBIS PETITIONS

Rule 3.3.1

Application

This chapter does not apply to extraordinary writs in misdemeanor or infraction cases in which the San Diego Superior Court is named as respondent. Such writs are governed by Division VII rules (Appellate).

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 3.3.2

Place for Filing

A. Habeas Corpus Petitions.

1. A petition for writ of habeas corpus should be filed in the criminal records division of the court that serves the area in which the underlying criminal case was or is pending.

2. A petition for writ of habeas corpus filed by or on behalf of an inmate at the R.J. Donovan Correctional Facility concerning a condition of confinement should be filed at the South County Division. A petition challenging a parole eligibility finding should be filed in the criminal records division of the court that serves the area in which the underlying criminal case was adjudicated.

B. Error Coram Nobis Petitions. A petition for writ of error coram nobis must be filed in the department of the supervising criminal judge of the division in which the underlying criminal case was or is pending.

C. Subsequent Pleadings. Unless otherwise ordered, any pleadings filed by any party after the original petition must be filed at the same location as the original petition, not in the department to which the petition has been assigned.

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 3.3.3

Service of Petition

A. Except as provided in sections B and C of this rule, a petition will not be accepted by the clerk for filing unless it is accompanied by a proof of personal service upon the respondent.

B. When a petitioner is a defendant who is not represented by counsel, the clerk will accept the petition for filing if it is accompanied by a proof of personal service or service by mail upon the respondent.

C. When a petitioner is an incarcerated prisoner, the clerk will accept the petition for filing without requiring a proof of service.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 3.3.4

Supporting Documents

A. A petition for any of the writs included in this chapter must be accompanied by the following:

1. A copy of the order or judgment from which relief is sought;

2. Any declarations, relevant records, transcripts, or any other documents supporting a claim;

3. Documentation to show that a petitioner has exhausted any administrative remedies prior to filing the petition, if required, or a declaration under penalty of perjury explaining why administrative remedies have not been sought.

B. If a petitioner does not submit the required documents or does not provide facts sufficient to excuse the failure to submit the required documents, the court may summarily deny the petition.

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 3.3.5

Disposition of Petition

A. Habeas Corpus Petitions. The parties must follow the procedures set forth in California Rules of Court, rules 4.550-4.552.

B. Error Coram Nobis Petitions.

1. Within 30 days after the filing of the petition, the court will either summarily deny the petition or set the matter for hearing.

2. If the matter is set for hearing, the court will allow at least 15 days for the respondent and any real party in interest to file a responsive pleading.

3. On motion of any party, or on the court's own motion, for good cause shown, the court may shorten or extend time for doing any act under this rule.

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2001; Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006; Rev. 1/1/2009)

DIVISION IV

PROBATE

CHAPTER 1
DEPARTMENTAL ADMINISTRATION AND ORGANIZATION

Rule 4.1.1

Address, Phone and Hours for Probate Examining Division

A. The addresses, phone numbers and hours for the Probate Divisions can be found at the court's website, www.sdcourt.ca.gov.

B. In these rules, the Central Division and the North County Division will sometimes be referred to as "The Probate Court."

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.1.2

Venue for Probate

A. Venue for probate cases is divided into two divisions, Central and North County (Vista). The East and South Divisions are included in the Central Division for purposes of this rule. Original petitions must show the proper venue and be filed in the appropriate court, according to zip codes found on the court's website at www.sdcourt.ca.gov.

B. Petitions which are not filed in the proper venue pursuant to the above will be transferred on the court's own motion.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.1.3

Change of Venue

Requests for change of venue must be directed to the assigned probate judge of the court having original venue. The ex parte request must take the form of a declaration and be accompanied by the proposed order for the judge's signature.

(Adopted 1/1/1990; Rev. 7/1/1995; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

CHAPTER 2
PLEADINGS: FORM AND FILING; SANCTIONS

Rule 4.2.1

Backing on Papers Filed

All wills and other testamentary documents submitted for filing must be attached to a stiff backing cover, the right side margin of which contains the document's caption (title) which must be fully visible.

(Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.2.2

Consolidation with the Lowest Number and Notice of Related Case/Petition

A. Whenever it appears that two or more petitions with different numbers have been filed with reference to the same decedent, conservatee or minor, the court will, on its own motion, consolidate all of the matters with the matter bearing the lowest number.

B. Where a complete consolidation of proceedings under the Probate Code is ordered, the clerk, unless otherwise ordered by the court, must file such consolidated proceeding and all subsequent papers relating thereto under the number assigned to the case which was filed first and therefore has the lowest number.

C. California Rules of Court, rule 3.300, respecting the requirements for Notice of Related Case, applies to all petitions or applications filed with the Probate Divisions of the Court.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. & Renum. 1/1/2009)

Rule 4.2.3

Sanctions

A. If any counsel, a party represented by counsel, or a party in pro per, fails to comply with any of the requirements of Division IV of these rules, the court, on motion of a party or on its own motion, may strike all or any part of any pleadings of that party; or dismiss the action or proceeding or any part thereof; or enter a judgment by default against that party; or impose other penalties of a lesser nature or otherwise provided by law; and may order that party or his or her counsel to pay to the moving party the reasonable expenses in making the motion, including reasonable attorney fees.

B. If a failure to comply with the rules in Division IV is the responsibility of counsel and not of the party, any penalty must be imposed on counsel and must not adversely affect the party's cause of action or defense thereto.
(Adopted 1/1/2006; Renum. 1/1/2007)

CHAPTER 3
PLEADINGS: FORM OF PAPERS PRESENTED FOR FILING

Rule 4.3.1

Caption of Petitions

A. The probate filing clerk is not required to read the body of the petition or the prayer to determine notice requirements.

B. A "Register of Actions" number (ROA) will be assigned at the time the petition is set for hearing. The ROA must be stated directly below the case number in the caption of all subsequently filed pleadings related to that petition. The party giving notice of the hearing on the petition must include the ROA in the notice.
(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.3.2

Filing Documents for Calendared Matters

A. The hearing date, time and department are required on documents filed in connection with matters already set for hearing, and must appear on the first page of the document, below the caption.

B. Petitions, Applications, and Accountings. In order to be considered at the calendared hearing, documents filed after the calendared petition must be filed no later than 4:30 p.m. three court days prior to the hearing. Any document filed after the deadline will be considered late and will not be reviewed by Probate Examining for the calendared hearing.

C. Form and Lodging of Exhibits. The foundation for exhibits submitted for the court's consideration must be set forth in appropriate declarations which must be filed with the court. However, if the exhibits accompanying a motion exceed ten pages cumulatively, they must be lodged with the court in accordance with F. below, rather than attached to the pleadings which will remain in the court file. Such exhibits must be lodged at the same time as the corresponding papers are filed with the court. Exhibits written in a foreign language must be accompanied by a translation certified by a qualified interpreter.

D. Accounting Format. Accounting schedules must be filed with the court and not lodged or attached as exhibits.

E. Lodged Documents. Lodged material must be accompanied by either a stamped, self-addressed envelope or an attorney service pick-up slip.

F. Lodgments. A Notice of Lodgment listing all of the items lodged must be filed and served on all appearing parties at the time any matter is lodged with the court. The documents lodged with the court must also be tabbed or paginated to correlate to the Notice of Lodgment. The Notice of Lodgment and the extra copy of the Notice will be filed stamped by the court. Following the return of the lodged documents by the court, the party lodging them must retain them until the applicable appeal period has expired.

G. Fax Filing. A faxed document may be filed in accordance with the California Rules of Court, rule 2.300 et seq. However, direct fax filing under California Rules of Court, rule 2.304, is not available.
(Adopted 1/1/1990; Rev. 7/1/1996; Rev. 1/1/2000; Rev. & Renum. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.3.3

Use of Judicial Council Forms

A. The latest version of applicable printed forms of petitions, orders and other documents approved by the Judicial Council must be used in all cases, unless otherwise permitted or directed by the court. If a form is inadequate for a given circumstance, an addendum may be attached to the form. When no applicable form has been so approved, counsel must draft their own documents following requirements for pleading format.

B. When printed forms are reproduced on the front and back of a single sheet, the back sheet must be inverted ("tumbled") so that it can be read when clipped at the top in a file folder.

C. Counsel are cautioned that printed forms prepared by banks or others may not be acceptable for filing.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.3.4

Affidavits and Declarations Under Penalty of Perjury

A. A declaration must meet all of the requirements of Code of Civil Procedure section 2015.5 to be acceptable in lieu of an affidavit and may contain the following language, whether executed within or without California:

"I declare [or certify] under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date].

_____
[signature of fiduciary]

_____
[name of fiduciary]"

B. If such declaration is executed within California, it may take either the above form or the following form:

"I declare [or certify] under penalty of perjury that the foregoing is true and correct and that this Declaration is executed on [date] at [city], California.

_____
[signature of fiduciary]

_____
[name of fiduciary]"

C. Where a corporation is the fiduciary, the verification must be made by an officer on its behalf and should take the following form:

"I am [title of officer] of the petitioner in the above-entitled matter, and I am authorized to make this verification on its behalf. I have read the foregoing petition and know its contents, which are true of my own knowledge, except as to the matters that are stated on my information and belief, and as to those matters, I believe it to be true. I declare [or certify] under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on [date] at [city] California.

_____
[signature of officer]

_____
[name of officer]"
(Adopted 1/1/1990; Renum. 7/1/2003; Renum. 1/1/2006)

Rule 4.3.5

Complete Address in Petition or Report

Where a petition or report is required to include an address, a full and complete number, street, city, state and zip code for the person's place of business or place of residence must be set forth. Where the mailing address is a different address, it must also be included.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.3.6

Multiple Minors and Conservatees

A. Where several minors share the same mother, a Petition for Guardianship may be filed under one case number and include all the minors.

B. Where a husband and wife are to be conserved, a separate Petition for Conservatorship for each may be filed under the same case number if the assets of the estate are community property. In all other cases, the conserved husband and wife must have separate case numbers.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

CHAPTER 4
SETTINGS, ASSIGNMENTS AND CONTINUANCES

Rule 4.4.1

Calendar Settings of Probate Matters

A. All petitions in probate matters which require a hearing will, upon being filed with the court, be set by the clerk on the normal calendar day.

B. Any request for early setting must be approved by the Probate Examining Department and will be granted only for good cause.

C. Calendar times may be obtained from the court's website at www.sdcourt.ca.gov or by calling the Business Office at each location.

D. Calendar times are subject to change. (Cross Reference: Contested Matters, Chapter 22.)

E. All petitions for appointment of a Personal Representative, Conservator or Guardian must be filed along with a completed "Duties and Liabilities" form.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.4.2

Probate Hearing Once Noticed Cannot be Advanced

When a hearing on a probate matter has been noticed, or when it has been noticed and then continued to a definite date, the matter cannot be heard before the date set, either by means of a new petition, an amended petition, or by a new notice.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.4.3

Continuances

A. Any request for a continuance before the time of the hearing, must be made by or with the permission of petitioning counsel or a petitioner acting without an attorney. Continuances may not be granted on the date of the hearing, unless requested and granted through Telecourt as stated at Rule 4.6.2 or by the court when the matter is called for hearing.

B. A one-week continuance will only be granted for good cause.

C. A first and second continuance of two weeks or more may be obtained by calling the Probate Examiner. After two continuances have been granted, further continuances must be approved by the court.

D. Continuance policy is subject to change.

E. A preapproved matter will be continued if an objection is made at time of call and counsel for the preapproved matter is not present. Counsel will be notified of the continuance.

F. Probate examiners have authority to continue the hearing date on petitions or other pleadings filed with the court. However, where responses or objections have been filed or where counsel asking for a continuance has reason to know another party or counsel may attend the hearing, such counsel must advise all such parties and counsel of the continuance at the earliest possible date so as to avoid unnecessary appearances, inconvenience and expense.

(Adopted 1/1/1990; Rev. 1/1/1996; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.4.4

Setting Matters Already on File

A. When a petition is on file but not set for hearing, it will be set by the probate examiner upon request. The request must be in writing and a notice of hearing must accompany the request. A petition which has become out-of-date will be denied a new setting date and a new petition will be required to be filed.

B. If the matter was previously set and taken off calendar because of defects or nonappearance, the material necessary to correct the defects must accompany the request for setting. The request for setting may be refused without the corrections.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.4.5

Telephonic Appearances

In accordance with the provisions of the California Rules of Court, rule 3.670(l), the court designates CourtCall, LLC, as the provider that must be used for telephonic court appearances. A party that intends to appear telephonically for a hearing listed in the rule must provide notice as specified in the California Rules of Court, rule 3.670(g). The party must also arrange the appearance with CourtCall, including following any notice requirements

and payment of fees as required by CourtCall. Information on arranging an appearance and payment of fees may be obtained directly from CourtCall at (888) 882-6878.

The court may deny a request to appear telephonically and require the parties to appear in person pursuant to the California Rules of Court, rule 3.670(h).
(Adopted 1/1/2009)

CHAPTER 5
NOTICES

Rule 4.5.1

Additional Notice Requirements

A. Under the provisions of the Probate Code, the court may require additional notice in any matter.

B. Ordinarily, such notice will be required whenever it appears that the interests of any person may be adversely affected by the determination of the issues raised by the pleadings, such as when the status of property is to be determined or substantial fees for extraordinary services are requested.

C. The court may require notice in such cases to include not only the time and place of hearing but also a summary of the matters to be determined, or it may require a copy of the petition to be served with the notice.

D. The probate calendar clerk will prepare and post the notice as required pursuant to Probate Code section 10308, subdivision (c). The clerk is not responsible for publications or mailings.

E. Notice to the Public Administrator/Public Guardian will be required in all appointment proceedings for decedent's estates when the proposed fiduciary is a creditor or not related to the decedent, and Letters Administration are requested; or when a non-resident of the United States is proposed.

F. Thirty (30) days "Notice of Hearing" to the Department of Health Services is required on petitions requesting approval of an accounting, amendment or addition to a first party Special Needs Trust by the Probate Court.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 4.5.2

Proof of Service

A. It is not sufficient in proofs of service by mail to declare that notice, etc., was mailed to the persons listed in the petition. Pursuant to Probate Code section 1260 and Code of Civil Procedure section 1013, subdivision (a), the court requires the proof of service to set forth the names and addresses of the persons as they appear on the envelopes.

B. Where notice must be served other than by regular mail, the proof of service must show that notice was served by airmail, by registered or certified mail, by mail with a written acknowledgment of receipt of the notice, or by personal service.

C. Any person requesting that the court surcharge, suspend or remove a conservator, guardian, trustee, or personal representative, or objecting to an account by such fiduciary must file proof of service of the Notice to Surety required by Probate Code section 1213 prior to the hearing on their Petition or Objection.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.5.3

Notice Re Special Letters in Will Contest

In the event of a will contest, a petition for special letters of administration will not be granted without notice to the surviving spouse, the person nominated as executor and any other person who, in the discretion of the court, appears to be equitably entitled to notice.
(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.5.4

Notice to Persons Requesting Special Notice

Notice must be given to or waived by any person requesting special notice, whether or not the matter is one for which special notice was specifically requested.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.5.5

Notices to Trust Beneficiaries

If a personal representative is also the sole named trustee of a testamentary or non-testamentary trust, and the estate or any part thereof is to be distributed to the trustee of the trust, then notice must be sent to the beneficiaries of the trust. In addition, the names and addresses of the beneficiaries must be listed in the petition.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

CHAPTER 6
CALENDAR NOTES AND HEARINGS

Rule 4.6.1

Availability of Probate Examiner's Notes and Clearing of Defects

A. Probate examiner's notes are available to counsel to determine if any defects in pleadings or procedure have been noted by the examiner.

B. The notes are available on the San Diego Superior Court website, www.sdcourt.ca.gov.

When the examiner receives additional pleadings and updates the notes, the new notes will ordinarily be posted to the website by opening of business the following day.

C. If counsel does not have access to the internet, he may request that the notes be sent to him by attaching a "Mail Option" form which is available in Probate Services, to the petition, with a self-addressed, stamped envelope or a messenger slip.

D. After checking the notes, counsel are encouraged to call Probate Examining with any questions counsel may have or explanations that may assist in the clearing of the defects. Counsel may also appear in person to confer with Probate Examining to clear defects. All such calls or meetings must be during the open hours of Probate Examining.

E. An appearance is required on all matters not preapproved even though there are no defects.

F. To correct defects counsel are required, at least three court days in advance of the hearing date, and no later than 4:30 p.m. to supply to the probate examiner's office any additional documents or explanations necessary for approval of the petition without continuance. Any documents submitted late may not be examined before the hearing, and a continuance may be required. See Rule 4.3.2.

G. Supplements which cure defects do not require additional notice. Amendments and Amendments to pleadings require additional notice. See California Rules of Court, rule 7.53.
(Adopted 1/1/1990; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2009)

Rule 4.6.2

Telecourt

If an uncontested matter has not been pre-approved or continued by the examiner, counsel may appear by a telephone call, at such date, time and telephone number as designated by the probate judge and posted on the court's website, www.sdcourt.ca.gov, to seek pre-approval or a continuance. Counsel must be on the phone line when the call is answered.
(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

CHAPTER 7
ORDERS AND BONDS

Rule 4.7.1

Preparation of Orders

A. An order or document on a matter requiring the signature of the judge must be submitted to the Probate Business Office for review before being presented to the judge, unless counsel is otherwise directed by the court. Orders may be submitted on or after the hearing date.

B. Counsel for the prevailing party must, unless the court orders otherwise, prepare and submit a formal order. Orders must be submitted in accordance with the procedure set forth in California Rules of Court, rule 3.1312.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.7.2

Material to be Included in Probate Orders

A. All orders or decrees in probate matters must be complete in themselves, in that they must set forth all matters actually passed on by the court, the relief granted, the names of persons, descriptions of property and/or

amounts of money affected with the same particularity required of judgments in general civil matters. The introductory paragraph must include the subject of the hearing, the date, time, department number, judge's name, and names of the parties and attorneys who appeared and whether the appearance was in person, telephonic, or that the matter was preapproved and no appearance was necessary.

B. Probate orders must be drawn so that their general effect may be determined without reference to the petition on which they are based.

C. In no case may any material appear after the signature of the judge.

D. At least two lines of text must be included on the page containing the judge's signature.

E. While in orders settling accounts it is proper to use general language approving the account, the report, and the acts reflected therein, it is not sufficient in any order to recite merely that the petition as presented is granted.

F. Orders settling accounts must also contain a statement as to the balance of the estate on hand, specifically noting the amount of cash included in the balance.

G. All orders for distribution (including estates, conservatorships, guardianships and trusts) must contain the following:

1. A list of the assets on hand;

2. The beneficiaries under the will or, in the event of intestacy, the heirs at law and their specific relationship to the decedent. The applicable terms of any assignment of interest, agreement for distribution, or decree determining interest must be fully set forth.

3. In termination of guardianships and conservatorships, the person or persons entitled to distribution of the assets. The applicable terms of any assignment of interest, agreement for distribution, or decree determining interest in an estate must be fully set forth;

4. A distribution schedule describing each asset and setting forth charges against distributive shares with sufficient clarity to enable each distributee to determine the net distribution;

5. A provision setting forth the persons to whom any later discovered property is to be distributed; and the appropriate share they are to receive

6. The fees and commissions allowed by the court.

7. The following statement is acceptable as a finding of assets on hand: "The court finds that the assets described in the order of distribution comprise the entire estate on hand for distribution"

H. The court will not hear any subsequently filed petition covering the same subject matter of a previous petition where the order previously made has not been submitted and approved pursuant to the requirements of these rules.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.7.3

Riders and Exhibits

No riders or exhibits may be attached to any order, except as may be otherwise provided on Judicial Council forms.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.7.4

Orders for Continuing Payment Must Have a Maximum Time Limit

The court will not make orders for continuing payments to run "until further order of the court." All such orders must provide for payments that "commence as of _____ and continue for a period not to exceed _____ months or until further order of the court, whichever shall first occur."

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.7.5

Application for Ex Parte Orders - Generally

A. All ex parte applications must comply with rule 3.1200 et seq. of the California Rules of Court.

B. All applications for ex parte orders must be reviewed by Probate Examining before presentation to the judge.

C. Any application for an ex parte order must be accompanied by a petition, and a separate order complete in itself. It is not sufficient for such an order to provide merely that the petition has been granted, for example, that the sale of property set forth in the petition has been approved.

D. Whether there are parties entitled to specific notice of any matter is not controlling as to whether a petition will be heard by the court on an ex parte application. Requirements of the Probate Code and policy of the court are determinative of whether a matter may be heard ex parte.

E. The court requires notice to all parties entitled to notice no later than 10:00 a.m. the court day preceding the hearing. Every ex parte application must be accompanied by a written declaration of such notice or of the reason it was not given as required by California Rules of Court, rule 3.1204. When a Judicial Council Form is not used, an ex parte application must also include a declaration in support of the application and a memorandum of points and authorities.

F. Filing fees must be paid and a case number issued before a party presents an ex parte application. This includes a petition for letters of special administration where no petition for probate is first filed and in those cases the ex parte petition will be filed to open the case and a conformed copy of that filed petition must be presented for the ex parte application. If a request for waiver of fees is presented, the underlying petition will be filed, however in the instance where a judicial officer must approve the waiver of fees, an ex parte application is required to be submitted with that request.

G. All papers presented for ex parte consideration must be presented with an appropriate "Ex Parte Application" coversheet. Coversheets are available at the Probate Business Office or on the court's website. Coversheets must be presented on green paper. All ex parte applications will be filed with the court irrespective of whether the relief sought was granted or denied.

H. Telephone the business office of the Probate Division for ex parte procedures specific to that location or visit the court's website, www.sdcourt.ca.gov.

(Adopted 1/1/1990; Rev. 7/1/1995; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.7.6

Matters Which May be Heard Ex Parte

Matters which may be heard ex parte include the following:

A. Sale of securities;

B. Sale of depreciating assets;

C. Family allowance (First application before Inventory);

D. Guardianship and conservatorship investments;

E. Appointment of special administrator;

F. Appointment of temporary conservator or guardian, providing good cause is shown for the appointment without the required five days notice to the proposed conservatee and petition for appointment of general conservator or guardian is on file or will be filed at same time as the petition for temporary, see Local Rules 4.18.2 and 4.19.1 for further requirements;

G. Increase in bond;

H. Amendment of title of proceedings;

I. Authorization to enter into exclusive listing agreement for sale of real property;

J. Preliminary distribution of estate pursuant to Probate Code section 11623 on proof that Inventory and Appraisal has been filed;

K. Authorization to invest in units of a common trust fund;

L. Matters as allowed at the discretion of the court. The court will not hear contested matters in the absence of extraordinary circumstances; and,

M. Appointment of a guardian ad litem.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.7.7

Communications with the Court

Documents presented to the Probate Court for filing must comply with applicable Probate Codes and Rules of Court, and notice of filing must be given as required. Other communications such as letters and notes directed to the court or staff are subject to California Rules of Court, rule 7.10(c). (See Code of Judicial Ethics.)

(Adopted 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.7.8

Nunc Pro Tunc Orders Correcting Clerical Errors

A. If, through inadvertence, the minute order or the signed decree fails to state the order actually made by the court, and such inadvertence is brought to the attention of the court by declaration, the court may make a nunc pro tunc order correcting the mistake, which will relate back to the date of the original order. The order must be captioned: "Nunc Pro Tunc Order Correcting...[Caption of original order]..."

B. The order must not take the form of an amended order and must be substantially in the following form: "Upon consideration of the affidavit or declaration of _____, to correct a clerical error, the [identify the order to be

corrected, giving the title and date thereof] is corrected on the court's own motion, by striking the following [here set out the matter to be eliminated] and by inserting in lieu thereof the following: [here set out the corrected matter]".

C. The original order is to be marked by the clerk to indicate that a nunc pro tunc order has been signed, however, the original order is not to be physically changed by the clerk in any other manner, but is to be used in conjunction with the nunc pro tunc order correcting it.

D. To prevent further errors, a complete clause or sentence must be stricken, even if it is intended to correct only one word or a single figure. Reference must not be made to page and line number of a written order intended to be changed as the line number may vary on various copies of the same order.

E. The date of the order must be left blank for the court to fill in and immediately following or below the blank date must appear the words "nunc pro tunc to [date of original order]."

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.7.9

Reserved for Future Use

Rule 4.7.10

Bonds; Additional Bond

A. In a matter where bond has previously been posted, there must be included in any current account a separate paragraph setting forth the total bond posted, the appraised value of personal property and real property subject to disposition without court approval or confirmation, the estimated annual income from real and personal property and a statement of any additional bond thereby required.

B. Conservators or guardians are required to seek ex parte authority to increase the amount of bond whenever the conditions of Probate Code section 2320.1 are met, and may not defer a request for such increase to a current account.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007)

Rule 4.7.11

Deposited Funds

A. Unless specifically authorized by the court, all cash must be deposited in a fully insured account with a bank, credit union, trust company or savings and loan. The depositing party will allege the nature and location of the account and the fact of insurance at the time of an accounting and report.

B. Money deposited into a blocked account will be excluded in computing the amount of bond necessary.

C. Where the court makes the order blocking funds at any calendared hearing, both an order on the hearing and a separate "Order To Deposit Money Into Blocked Account" (MC-355) must be presented.

D. Within 15 court days following the date of the minute order the "Receipt and Acknowledgment of Order for the Deposit of Money into Blocked Account" (MC-356) must be filed with the Probate Court. If the appropriate receipt is not returned, the personal representative and counsel of record are subject to an Order to Show Cause why bond should not be posted and sanctions imposed.

E. When there is good cause for failure to comply with paragraph D, a party may present an ex parte petition to extend the time to return the receipt.

(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

CHAPTER 8
APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

Rule 4.8.1

Letters Issued in Decedent's Estates

A. Letters issued in a decedent's estate will expire 12 months after the date the underlying petition is approved.

B. At the hearing where the court approves the petition for administration and for letters to issue, a review hearing will be set for no later than 13 months after the date the underlying petition is approved.

C. At the time of the review hearing, if the estate has been closed or the report required by Probate Code section 12200 has been filed, the review hearing will be taken off calendar. If the estate has not been closed and the report required by Probate Code section 12200 has not been filed, the petitioner will be ordered to file a Status Report under Probate Code section 12200 and may be required to show cause why sanctions should not be imposed

pursuant to Code of Civil Procedure sections 177.5 and/or 575.5, or statutory fee reduced, for failure to file a Status Report prior to the review hearing. The court may make additional orders as, in the court's discretion, is appropriate.

D. Petitioners must file the report required by Probate Code section 12200. Failure to file the report may result in sanctions. Upon failure to comply with Probate Code section 12200, the court will consider reduction of statutory compensation pursuant to Probate Code section 12205. Counsel should file declarations at the time of Final Distribution, or at any hearing on an allowance for compensation, explaining why failure to comply with Probate Code section 12200 was beyond the control of the party seeking compensation or was in the best interest of the estate.

E. In estates for which a federal tax return is required the personal representative may file an ex parte request to extend letters of administration for an additional six months and to set the review hearing 18 months from the date at which the petition for administration was approved. The request for extension must be accompanied by a verified statement by the personal representative that a federal tax return is required for the estate. (See Prob. Code, § 12200, subd. (b).) If the estate has not been closed or a Probate Code section 12200 Report filed within 18 months, the petitioner will be ordered to file a Status Report and may be required to show cause in accordance with paragraphs C and D above.

(Adopted 7/1/2002; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.8.2

Allegations in Petitions Re: Beneficiaries

In all petitions pertaining to the administrative duties of a fiduciary:

A. The nominated trustee of a trust created by a will must be included in the list of beneficiaries and identified as the trustee on that list. (See also Rule 4.5.5.)

B. If the interest of the beneficiary is contingent as of the date of the petition, or the happening of an event, such as survivorship for a specified period, then the contingent beneficiary must also be listed.

C. Each person provided for in the original will whose devise has been revoked in a subsequent codicil.

D. The street address and relationship of the proposed personal representative to the decedent must appear in the petition.

E. When second generation heirs are listed, the deceased ancestor through which they take must be named, along with the ancestor's relationship to decedent.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006)

Rule 4.8.3

Notice to Foreign Consul

A. When notice is required to be given to foreign consul, the identity of the proper consul must be set forth in Petition for Probate.

B. If a beneficiary whose address is in a foreign nation is an American citizen, that fact must be alleged to avoid having to set forth that nation's foreign consul.

C. Notices pursuant to this rule will be required only for an original petition for probate. This notice is in addition to that given to heirs and devisees under Section 8110 and 15-day notice is required.

D. Information as to whether a country has recognized diplomatic or consular representation in the United States may be obtained from the United States Department of State.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.8.4

Reserved for Future Use

(Del. 1/1/2009)

Rule 4.8.5

Multiple Testamentary Instruments - Proof

Each proffered instrument must be proved by a separate affidavit or declaration pursuant to Probate Code section 8220. Nevertheless, an instrument, as defined by Probate Code section 88, which has been republished by a subsequent instrument need not be proven independently of the subsequent instrument.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.8.6

Will With Deletions or Interlineations

Where the will offered for probate contains alterations by interlineation or deletion on its face, the petition for probate must contain allegations to explain the alterations and state petitioner's position in the matter. The petition must request that the interlineated portion be admitted or not admitted or that the deletions take effect or be disregarded or make such other request as petitioner finds to be according to the law. The petition must further contain statements of all relevant facts regarding the alteration, for example, whether the will was in the possession of the decedent. Such additional statements must be set forth in an attachment to the Judicial Council form petition.

Proof of holographic instrument, Judicial Council form DF-135, is required. (Prob. Code, §§ 8221, 8222.)
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.8.7

Bonding of Personal Representatives

A. When a bond is required, the minimum bond that will be set for a resident and non-resident personal representative upon initial appointment will be $20,000.

B. Bonds required by the court at the hearing of the petition for appointment of the personal representative must be filed with the Clerk of the Superior Court before the clerk will issue the appropriate letters.

C. Any request for a waiver of bond must include a statement by the petitioner regarding knowledge of any creditors of the decedent and the amount of the claim.

D. Non-resident personal representatives are subject to no less than the minimum bond notwithstanding a waiver of the bond by beneficiaries, heirs or by waiver in the will.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.8.8

Declinations and Consents to Serve

A. It is insufficient merely to allege that the person or non-California bank or trust company named in the decedent's will as executor thereof is not qualified or declines to act. A written declination to act, signed by such person or entity, must be filed with the court.

B. If a petition for issuance of letters to one or more personal representatives is filed and any of the named personal representatives for whom letters are sought is not a petitioner, then a consent to act, signed by each such non-petitioning personal representative must be filed with the court. If a consent to act cannot be obtained, the petition must state facts regarding both the efforts to obtain consent and the results of those efforts.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006)

Rule 4.8.9

Continuance to Permit Filing of Contest

If an interested party appears in person or by counsel when a petition for probate is called for hearing and declares a desire to file a written contest, the court will continue the hearing with the understanding that if a contest is not actually on file at the new hearing date, the hearing will proceed.
(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.8.10

Multiple Representatives

The clerk will not allow less than all appointed representatives to qualify and will only issue letters jointly to all appointed representatives, unless the order of appointment specifically provides for separate qualification.
(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.8.11

Statement of Address of Nonresident Personal Representative

A nonresident personal representative is to file with the court a signed and acknowledged statement setting forth the personal representative's permanent address. If this has not been done and anyone questions the handling of the estate, the court, on its own motion, may undertake proceedings for removal of the personal representative pursuant to Probate Code section 8573.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

CHAPTER 9
SUMMARY PROCEEDINGS

Rule 4.9.1

Petition to Set Aside Small Estate

A petition to set aside a small estate (under Prob. Code, § 6602) must be filed as a separate petition and must not be worded in the alternative with a petition for probate. If a petition to set aside a small estate is filed concurrently with a petition for probate, the petitions may be set for hearing at the same time.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.9.2

Spousal Property Petition

A. If the basis for determining that property should pass or be confirmed to the surviving spouse is that the property is community property or quasi-community property, the following information should be included in the spousal property petition:

1 Date and place of marriage;

2. Ownership of any real and personal property on date of marriage and a description and approximation of values;

3. Decedent's net worth at time of marriage;

4. Decedent's occupation at time of marriage;

5. A description of any property acquired after date of marriage by gift, devise, descent, proceeds of life insurance or joint tenancy survivorship, and dates of receipt and approximation of values;

6. The identification of any property described in 2 or 5 above which is still a part of this estate;

7. A copy (preferably a photocopy, showing signatures) of any document establishing the character of the property; and

8. Any additional facts upon which the claim that property is community or quasi-community property is based.

B. If a Petition references a will, the will must be on deposit with the court pursuant to Probate Code section 8200.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.9.3

Proceedings to Establish Fact of Death

A. A petition to establish the fact of death (under Prob. Code, § 200), where title to or any interest in property is affected by the death of a person (as in the case of death of a joint tenant or life tenant), must be filed as a separate petition from a petition for probate.

B. There is no provision in the Probate Code for the determination by the court of attorneys' fees in proceedings to establish the fact of death. No request for fees for services of this character may be included in any probate proceeding relating to the person whose fact of death is determined. Where, however, proceedings are necessary to establish the fact of death of a person who predeceased the decedent, a fee for extraordinary attorney's services may be proper in connection with administration of the latter decedent's estate.

C. A petition to establish the fact of death must be filed in a proceeding in the name of the deceased person whose interest is to be terminated, and the petition will not be acted upon if it is filed in any other proceeding.

D. A petition to establish the fact of death will be set for hearing at the time of filing unless otherwise requested by the person filing the petition.

E. In proceedings to establish the fact of death, the judgment may recite that the interest of the deceased person in the property has terminated. Recitals as to vesting of title must not be included.

F. A petition to establish the fact of death of an individual under Health & Safety Code section 103450 is a separate proceeding from the petition identified in A., above. Upon filing a petition under Health & Safety Code section 103450, a hearing will be set not less than five nor more than 10 days after the filing of a petition.

G. The court may make an order on the petition filed under F., determining the death did in fact occur at the time and place shown by the proofs adduced at the hearing. The order must be made in the form prescribed and furnished by the State Registrar, and will become effective upon a filing of a certified copy with the State Registrar.

H. Petitions to establish the fact of birth or marriage under Health & Safety Code section 10340 are set in the same manner as F.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006)

CHAPTER 10

INDEPENDENT ADMINISTRATION

Rule 4.10.1

Independent Administration

When a personal representative has been granted authority to administer the estate under the Independent Administration of Estates Act (beginning at Prob. Code, § 10400), a Notice of Proposed Action will be required for the sale of a mobile home value at or above $50,000.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006)

CHAPTER 11
MISCELLANEOUS PETITIONS

Rule 4.11.1

Petition for Instructions

A. The use of petitions for instructions is limited to those matters for which no other procedure is provided by statute.

B. Petitions for Instructions may not be used to determine the manner in which a probate estate should be distributed. A direction of the court regarding distribution of a probate estate will only be furnished pursuant to a Petition for Distribution or a Petition to Determine Entitlement.

C. The petitioner must set forth in the petition the specific instructions which petitioner believes the court should give.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.11.2

Petition to Determine Title to Real or Personal Property (Prob. Code, § 850)

Petitions filed pursuant to Probate Code section 850 will be set for hearing at least 40 days from the date of filing. If difficulties in effecting personal service are anticipated, a later hearing date may be obtained from the clerk so as to avoid continuances.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.11.3

Petition to Determine Persons Entitled to Distribution (Prob. Code, §§ 11700-11705)

A. Petitions under Probate Code section 11700 may be filed to resolve issues relating to the determination of persons entitled to distribution of the decedent's estate. Such issues include, but are not limited to, the identification of heirs or beneficiaries, the interpretation of the will, and the characterization of assets as estate assets. (The term "person" is defined in Prob. Code, § 56.)

B. A petition under Probate Code section 11700 must set forth the specific determination which the petitioner believes the court should make and must provide for a complete disposition of the property of the estate.

C. When a determination of persons entitled to distribution is requested in a petition for distribution, notice must be given in the same manner as required when a separate petition under Probate Code section 11700 is filed.

D. When a determination of persons entitled to distribution is requested and it appears that there may be an escheat, notice of hearing and a copy of the petition must be sent to the Attorney General. If any of the heirs are unknown in the petition for probate, then there will be a presumption of possible escheat and notice to the Attorney General is required.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.11.4

Petition for Family Allowance (Prob. Code, §§ 6540-6545)

A. Ex parte petitions for family allowance may be made during the six-month period following the qualification of personal representative if an inventory has not been filed. Consent to the allowance or waiver of notice of the personal representative must accompany the ex parte petition when the petitioner is not the personal representative. Ex parte orders for family allowance may be made for a period commencing with the date of death and continuing for a period not to exceed 12 months.

B. If an application for family allowance is made more than six months after the qualification of the personal representative, or after the inventory is filed, or is a petition for a second or additional allowance, a petition may not be filed ex parte and the petition must be set for hearing and required notice must be given.

C. The petition for family allowance must set forth, (1) the nature of estate assets and estimated value of the estate, (2) an itemized estimate of the recipient's monthly expenses, and (3) the estimated value of the recipient's other property and estimated income. Where the itemized expenses show payments of loans secured by real or personal property, the vesting of title to the property must also be set forth in the petition.

D. All orders for family allowance will be limited to a definite period and must provide for the allowance to be "for _____ months from the date of the order or until further order of the court, whichever occurs first."

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.11.5

Petition for Authority to Operate a Business, (Prob. Code, § 9760)

A. The court may direct that at least 15 days' notice be given to the three largest creditors of the business and to the beneficiaries of the estate when the personal representative petitions for authority to continue the operation of the decedent's business.

B. The court may prescribe any reasonable notice. A separate order prescribing notice must be obtained ex parte before the petition is filed.

(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.11.6

Petition for Authority to Borrow (Prob. Code, §§ 9800-9807)

A. Petitions for authority to borrow money must set forth the amount of the bond in force and the amount of the loan proceeds. If no additional bond is required, or if bond is waived, that fact must be alleged.

B. If a loan is to be secured by the property of the estate, an inventory for that property must be on file prior to the hearing.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.11.7

Petition for Authority to Retain an Attorney

A. A petition for authority to retain an attorney to pursue litigation must contain an allegation regarding counsel to be retained, the hourly rate or contingent fee agreement, the service to be provided, and a prospective amount that will be required for litigation.

B. If it appears that additional funds will be required over the amount allowed by the court on the initial petition, a subsequent petition must be set for hearing requesting an additional amount including the necessity for further funds, the amount spent to date, and for what services.

C. The Petition must be accompanied by a declaration by counsel detailing why the fees are properly a charge against the estate or trust, rather than a personal charge against the Petitioner. See *Whittlesey v. Aiello* (2002) 104 Cal.App.4th 1221 and *Terry v. Conlan* (2005) 131 Cal.App.4th 1445.

(Adopted 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007)

Rule 4.11.8

Joinder in Pleadings

A. Any interested party in an action before the Probate Court may indicate his or her endorsement of all opinions and positions taken in the previously or contemporaneously filed pleading of another party (the "Joined Pleading") by filing and serving a verified "Joinder in Pleading" prior to the hearing on the matter. The Joinder in Pleading must identify the party endorsing the Joined Pleading, the exact title of the Joined Pleading, and the filing date of the Joined Pleading if applicable.

B. The filing of a Joinder in Pleading indicates the endorsing party's adoption of the entire Joined Pleading, without exception. To bring additional facts, issues or other matters before the court, the endorsing party must file a separate or supplemental pleading. The endorsing party must give notice to all persons entitled to notice of the original Petition, and their attorneys of record, in the same manner as required for an original pleading. A party served with such Joinder in Pleading may move, demur, or otherwise plead to the Joinder in Pleading in the same manner as to an original pleading.

C. The Joinder in Pleading must be served upon all parties and interested persons as evidenced by a Proof of Service filed with the court prior to the hearing on the Joined Pleading. If it is the endorsing party's first appearance in the action, the endorsing party must pay the appropriate first appearance fee upon filing the Joinder in Pleading.

(Adopted 1/1/2006)

Rule 4.11.9

Substituted Judgment and Community Property Transactions

Absent good cause, an attorney, or a guardian ad litem, must be appointed for the Conservatee or incapacitated spouse in all proceedings pursuant to Probate Code section 2580 et seq., and section 3100 et seq. The attorney, or guardian ad litem, shall include in their report to the court recommendations, if appropriate, relative to the ultimate testamentary disposition of the involved assets.
(Adopted 1/1/2007)

Rule 4.11.10

Petition for Transfer

All orders transferring a probate matter to the superior court in another county must include the name and address of the superior court to which the case is being transferred.
(Adopted 1/1/2008)

CHAPTER 12
CREDITOR'S CLAIMS

Rule 4.12.1

Notice to Creditors

A. Notice of Administration must also be given to all known or reasonably ascertainable creditors pursuant to *Tulsa Professional Collection Services, Inc. v. Pope* (1988) 485 U.S. 478 and Probate Code section 9050. This notice must be filed with the court prior to or with the filing of a petition for distribution.

B. In an interim or final accounting, the personal representative must describe the compliance with Probate Code section 9050 and *Tulsa*. (See Rule 4.15.4.)
(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Rev. & Renum. 1/1/2006)

Rule 4.12.2

Filing Creditors' Claims

Counsel are advised to review the court file for creditors' claims prior to filing the final accounting. (See Prob. Code, § 9250.)
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.12.3

Creditors' Claims of Personal Representatives or Counsel

A. The creditor's claim of a personal representative or counsel for the personal representative must be timely filed with the court. A separate notation must be attached to the face of the claim indicating that the claim requires specific court action.

B. A blank allowance or rejection form must be attached for the court's action, with copies to be returned to counsel.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.12.4

Payment of Claims and Debts

A. Other than those creditors' claims ordered paid by the court, the personal representative may defer payment of claims until settlement of an account.

B. The personal representative may timely pay any debts that are just and reasonable subject to later approval by the court under Probate Code section 11005, which approval must be supported by appropriate evidence required by that section.

Payment pursuant to Probate Code section 11005 assumes that the debt is undisputed and the estate is solvent. Prudence may dictate caution before paying such claims.
(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.12.5

Special Creditors' Claims

A. Funeral expenses must be reasonable and interest is allowed on such claims commencing 60 days after the date of death.

B. Public entities' creditor's claims are governed by Probate Code section 9200 et seq., and may be barred only after actual notice is sent to the entity and the applicable claim period has expired.

C. Notice to the Director of Health Services for Medi-Cal claims must comply with Probate Code section 9202 and Welfare and Institutions Code section 14009.5.

(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

CHAPTER 13
SALES

Rule 4.13.1

Publication of Notice of Sale of Real Property

A. Unless one of the exceptions mentioned in Probate Code sections 10301-10303 apply, a publication of notice of sale of real property is required. A discretionary power of sale given by a will to a named executor does not extend to an administrator with will annexed unless the will so provides.

B. The notice of sale of real property must set forth the street address or other common designation of the property, if any, or if there is none, the legal description.

C. If a petition for confirmation of sale is filed alleging the sale took place prior to the date stated in the published notice, the sale cannot be confirmed.

D. If a fiduciary publishes a notice of sale of real property, the property must be sold pursuant to such publication.

E. If notice of sale is published, any sale must be in accordance with its terms. There cannot be a variance in the terms of sale as between the notice and the petition. Also, if the notice solicits cash offers only, the court cannot confirm a sale on terms other than cash.

F. If a petition for confirmation of sale of real property is filed prior to the date of sale specified in the notice, the court cannot announce the sale on the date set for hearing, but must deny confirmation without prejudice to a new sale and filing of a new return of sale.

G. In conservatorships, notice must be given to the conservatee as well as to any person requesting special notice. In guardianships notice must be given to any ward age 12 or older.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. & Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.13.2

Vesting of Title to Property

A. The court will not confirm a sale to a "nominee" or “assignee”, only to the actual buyer.

B. In a conservatorship or guardianship, a statement must be made whether or not the purchase of the real property has been made by a person with a family or affiliate relationship to the conservator or guardian as defined by Probate Code sections 2359 and 2403.

C. In a conservatorship or guardianship, a statement must be made whether or not there is a family or affiliate relationship between the conservator or guardian and any agent hired by them as defined by Probate Code sections 2359 and 2403.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.13.3

Bond on Sale of Real Property

A. Petitions for confirmation of sale of real property must set forth the amount of bond, if any, in force at the time of the sale, the amount of property in the estate which must be covered by bond subsequent to the sale, including proceeds of sale (cash and any note taken back by estate), and the probable annual income from remaining property. If no additional bond is required, or if bond is waived, such facts must be alleged.

B. Where an additional bond is required, the personal representative must file an additional bond, rather than a substitute bond, and it must be filed with the order confirming the sale.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.13.4

Exclusive Listings for the Sale of Real Property

A specific commission percentage will not be approved by the court as part of the exclusive listing agreement. All commissions are determined at the confirmation hearing.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.13.5

Commissions on Sale of Real Property

A. In all cases, a reasonable broker's commission will be determined by the court at the time of confirmation and must be paid from proceeds of the sale confirmed by the court. The court may consider current community practices and standards in making its determination. The court may not allow a commission in excess of

five percent (5%) on improved property or ten percent (10%) on unimproved property absent good cause shown for a larger commission.

B. The court must be advised whether the broker is, or has any interest in, the purchaser. (See Prob. Code, § 10160.5.)

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1995; Rev. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007)

Rule 4.13.6

Sale of Real Property When Buyer Assumes Encumbrance: Necessity for Minimum Deposit

A. A sale of real property may not be confirmed where the buyer assumes or takes subject to an existing encumbrance if the estate is subject to a contingent liability. The petition must set forth the facts pertinent to such assumption agreement.

B. The court requires a ten percent (10%) deposit be made prior to confirmation on any sale of real property.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.13.7

Sale of Specifically Devised Property

The sale may not be approved without the specific beneficiary's consent unless the court finds good cause for approval without the consent.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006)

Rule 4.13.8

Personal Property Must Be Appraised Before Sale

Sales of personal property may not be approved as sales of depreciating property, or confirmed, unless the property has been appraised. When necessary, a partial inventory and appraisal or a letter of appraisal obtained from the probate referee may be filed for this purpose.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.13.9

Sales of Mobile Homes

The court may approve sales of mobile homes as depreciating property. The petition for approval must set forth the efforts made to expose the property to the market.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.13.10

Sales of Securities

A. Commonly traded securities need not be appraised before the sale may be authorized.

B. In petitions for sales of listed securities, the specific exchange on which such securities are traded must be set forth.

C. In petitions for sales of unlisted securities, the recent bid and asked prices must be set forth.

D. Petitions for sale of mutual funds redeemable by the issuer at net asset value need only allege that the shares will be redeemed for the net asset value per share on the date of redemption.

E. If securities are "closely held," the petition must furnish the basis (by appraisal or otherwise in the discretion of the court) for fixing the minimum sales price.

F. The order authorizing the sale of any bond or unlisted stock (other than a mutual fund) must provide that the sale must be at not less than a specified amount per unit.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.13.11

Overbids

If the overbid is on terms different from the terms of the returned sale, the offer may be considered only if the personal representative, prior to confirmation of the sale, informs the court in person or by counsel that the offer is acceptable.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.13.12

Increased Bid Forms

When there is a successful overbid in open court on a sale of real property, an "Increased Bid in Open Court" (SDSC PR-065) must be completed, signed, and filed with the court before the conclusion of the hearing; otherwise, confirmation is not effective.
(Rev. & Renum. 7/1/2001; Rev. & Renum. 1/1/2006)

Rule 4.13.13

Allowance of Commissions Upon Overbid

When sale is confirmed upon an overbid and a real estate commission is involved, it is the duty of counsel for the estate to compute the commission pursuant to Probate Code section 10164 or 10165 and any allocation thereof between brokers per any agreement they may have, and to report the same to the court for its approval and inclusion in the court's minute order.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

CHAPTER 14
INVENTORY AND APPRAISAL

Rule 4.14.1

Preparation of Inventory and Appraisal

A. With the exception of specific sums of cash, all specifically bequeathed personal property owned by the decedent on the date of death must be itemized and separately appraised on the Inventory.

B. An Inventory of real property must include the following information:

1. Complete legal description;

2. Common address;

3. Assessor's Parcel Number;

4. Description of type of property (i.e., single family residential, multi-family residential, commercial, industrial, agricultural timber, mining, mineral interests, unimproved land).

C. The Inventory must not include any asset which is not an asset of the estate, such as:

1. Insurance proceeds payable to named beneficiaries.

2. Individual retirement accounts payable to named beneficiaries.

3. Trust assets which pass by trust terms, including Totten Trusts.

4. Assets held in joint tenancy.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.14.2

Correcting Inventory and Appraisal

A. If, before filing the Inventory with the court, a mistake is found, the personal representative may make changes to Attachment No. 1. However, any changes to Attachment No. 2 must be made by the probate referee.

B. If a mistake is found after filing the Inventory with the court a Corrected or Amended Inventory must be filed to correct the error.

C. If a change to Attachment No. 2 is necessary after it has been filed with the court, the correcting Inventory must be signed by the probate referee.

D. If a change to Attachment No. 1 is necessary, a Correcting Inventory may be signed only by the personal representative.

E. Only items being corrected are described on a Corrected Inventory and Appraisal.

For example:

Item No.	**Description**	**Appraised Value**
4.	Item 4 was previously described as: 400 shares XYZ common stock Item 4 is correctly described as: 300 shares XYZ common stock Previously appraised value: $4,000.00 Correct appraised value: $3,000.00	

Change in appraised value: ($1,000.00)

(Adopted 1/1/1990; Rev. 7/1/1996; Rev. & Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.14.3

Petition for Waiver of Appraisal by Referee

When no referee has been designated for the case, 15 days notice of the filing of a petition for waiver of appraisal by referee must be given to the referee designated by the San Diego Probate Referees to represent them, in the same manner as would be given to a referee designated for the case.
(Adopted 7/1/1996; Rev. & Renum. 7/1/2001; Renum. 1/1/2006)

CHAPTER 15
ACCOUNTS AND REPORTS

Rule 4.15.1

Required Form of Accounts

A. Accounting values of assets must not be changed to reflect fair market value, but fair market value may be set forth separately in the report or account.

B. Dispositive provisions of the Will, if any, must be set forth in the Final Accounting.
(Adopted 1/1/1990; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.15.2

Bank Letters and Statements

A. All interim accounts by individual fiduciaries must be supported by bank statements or financial statements verifying the balances of accounts at financial institutions as of the closing date of the accounting. The statements must be the originals, must show the vesting of the account, date of balance and the amount of balance. If a financial institution will not produce records required by this rule, petitioner must submit a declaration setting forth the due diligence efforts undertaken to obtain the required records.

B. The appropriate balance must be clearly highlighted or otherwise marked.

C. Balances shown in the accounting, if different, must be reconciled to the letters or statements.

D. Bank or financial statements containing personal information that would not otherwise be kept in a public file (i.e. social security number) must be filed under a separate pleading marked "Confidential Bank and/or Financial Statements." Bank or financial statements substantiating accountings by a private professional or licensed guardian or conservator must be lodged with the court until the date of the hearing at which the account is approved. The court may return the statements to the tendering party to hold until the account becomes final. These statements must be marked "Confidential Bank and/or Financial Statements for Accounting Purposes" and follow local rule 4.3.2 for lodging documents.

E. For purposes of this section, "institutions" is defined in Probate Code section 2890, subdivision (c).

F. For purposes of this section, "financial institutions" is defined in Probate Code section 2892, subdivision (b).
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.15.3

Allegations Re: Claims

The report accompanying any accounting or waiver of accounting must include the following information:

A. Whether any Notice of Administration was given to creditors within the last 30 days of the four-month statutory creditors' claim period and a complete listing of the creditors to whom such notice was sent, including the date mailed, to allow the court to determine the expiration of the creditors' claim period. This allegation is also necessary in petitions for preliminary distribution. (See Prob. Code, § 9051.)

B. If all Notices of Administration were given prior to the last 30 days of the four-month statutory claims period, an abbreviated statement noting that the requirements of Probate Code section 9050 were met is sufficient.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.15.4

Reporting Payment of Debts

Although a verified claim has not been filed, the court may approve payment of a debt. Such court approval is discretionary and may be granted pursuant to Probate Code section 11005 upon the basis of the following allegations in the verified petition and report:

A. Identification of the creditor, the amount and the date paid;

B. The debt was justly due from the decedent's estate;

C. The debt was timely paid in good faith;

D. The amount paid was the true amount owed by the decedent and was reasonable; and

E. The estate is solvent.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.15.5

Property to be Distributed Must Be Listed

A. The petition for distribution must list and describe in detail all property to be distributed, including cash on hand.

B. The description of promissory notes must indicate whether they are secured or unsecured; if secured, the security interest must be described.

C. Real property descriptions must include a complete legal description and street address and Assessor's Parcel Number.

D. The description must be set forth either in the body of the petition or in the prayer, or by a schedule in the accounting and incorporated in the petition by reference.

E. Description by reference to the inventory is not acceptable.

F. The value of each individual asset on hand and the total value of the assets must be set forth.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.15.6

Allegation Re: Character of Property

A. A petition for distribution must contain an allegation regarding the character of the property, whether separate, quasi-community or community.

B. An allegation regarding community or quasi-community property of the decedent must state whether the interest is the decedent's one-half or the entire community or quasi-community property of both spouses.

C. Unless the surviving spouse elects to include his or her interest in the probate estate pursuant to Probate Code section 13502, the court has no jurisdiction to order distribution of such interest or to order statutory fees based upon the value of such interest.

D. The court will authorize filing of a late election only upon showing of good cause.

(Adopted 1/1/1990; Rev. 7/1/1991; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.15.7

Compliance with Notice -- Medi-Cal and California Victim Compensation and Government Claims Board

Before the court will authorize distribution, there must be a showing of compliance with notice requirements of Probate Code section 9202 to:

A. The Director of Health Services or a showing that the notice thereunder is not required because neither decedent nor predeceased spouse received Medi-Cal, or that no claim can be made by the Department of Health Services because decedent died before June 28, 1981, was under age 65, or was survived by a spouse, minor child, or disabled child.

B. The Director of the California Victim Compensation and Government Claims Board or a showing that the notice thereunder is not required because an heir is not confined in a prison or facility under the jurisdiction of the Department of Corrections and Rehabilitation or confined in any county or city jail, road camp, industrial farm or other local correctional facility.

C. The Franchise Tax Board, for estates for which letters were issued on or after July 1, 2008.

(Adopted 1/1/1990; Rev. 7/1/1995; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.15.8

Vouchers

Vouchers supporting accounts are not to be filed with the clerk unless the court specifically orders them filed.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.15.9

Damages for Wrongful Death and for Physical Injury of Decedent

A. Damages for wrongful death, as distinguished from physical injury and property damage, are held by the personal representative on behalf of the statutory beneficiaries of the decedent's estate and are not part of the estate.

B. The disposition of such damages for wrongful death, and the amount of attorneys' fees and costs, may be determined by the court on a petition for authority to compromise. Notice of said petition must be mailed by the personal representative. This procedure is applicable to any action by the personal representative under federal as well as state law.

C. Damages and costs arising out of the physical injury to the decedent or property damage, as distinguished from wrongful death, must be held by the personal representative as the property of the estate and must be inventoried.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.15.10

Notice to Prior Representative or Counsel

If there has been a change of personal representative or a substitution of counsel, notice of hearing must be given to such prior representative or counsel of any petition in which fees or commissions are requested by the present personal representative or counsel unless:

A. A waiver of notice executed by the prior personal representative or counsel is on file; or

B. An agreement on the allocation of fees and/or commissions is on file or included in the petition; or

C. The file and the petition demonstrate that the fees and/or commissions of the prior personal representative or counsel have been provided for and allowed by the court.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.15.11

Petition for Authority to Continue Administration

Requests for authority to continue the administration of an estate must be made by a status report. The court will limit the extension to a period not to exceed 12 months from date of the order. The court may require an accounting before approving a subsequent extension request. Refer to section 12201 of the Probate Code for notice requirements.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

CHAPTER 16
FEES AND COMMISSIONS

Rule 4.16.1

Office and Travel Expense

A. Ordinary office expenses and travel incurred by a fiduciary or counsel are deemed to be compensated by the statutory fee, and the court will not allow further reimbursement except:

1. An exception may be made for the reasonable expenses of fiduciaries for travel on estate business.

2. For good cause shown, the court may allow office expenses such as photocopying, express mail, postage, or long distance phone expense, if the court considers such expenses necessary and reasonable in view of the amount of the statutory fees and work required in administration of the estate.

B. Travel and office expenses appearing in any account must be explained in the report.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

CHAPTER 17
DISTRIBUTION

Rule 4.17.1

Distribution to Minor

When a beneficiary is a minor or a disabled adult, the court requires the following documents to be filed in conjunction with the accounting and petition for final distribution:

A. A certified copy of the Letters of Guardianship or Conservatorship when distribution is to be made to the guardian of the minor or a disabled adult.

B. The written assurance of a parent that the minor's estate, including the bequest, does not exceed $5,000 when distribution is made pursuant to Probate Code section 3401.

C. The consent of the custodian to act if distribution is to be made to a custodian under the California Uniform Transfers to Minors Act (Prob. Code, § 3900 et seq.).
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.17.2

Distribution Under Probate Code Section 13101 Affidavit

If distribution is to be made to a person collecting assets under Probate Code section 13100, the required affidavit or declaration pursuant to Probate Code section 13101 must be filed before distribution will be ordered.
(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.17.3

Blocked Accounts

In any case in which funds are to be placed in a blocked account, Rule 4.7.11 of these rules must be followed.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.17.4

Distribution to Deceased Beneficiary

When an heir or beneficiary dies during administration of an estate, the decree must provide for distribution to the personal representative of the estate of the heir or beneficiary, pursuant to Probate Code sections 11801 and 11802, or, if applicable, to the person(s) entitled to the property in a summary proceeding pursuant to a declaration or affidavit under Probate Code section 13101.
(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.17.5

Assignment of interest in Estate

When distribution is requested pursuant to an assignment by a distributee, the court will require that the assignment be filed in the proceeding and may require that the consideration paid for the assignment be set forth. The court will require additional information to assure that the assignor fully comprehends the effect of the assignment that it was voluntarily made and was not grossly unreasonable. The terms of said assignment will be set forth in the Order for Distribution as set forth in Rule 4.7.2, infra.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.17.6

Preliminary Distribution Bond

A. If a preliminary distribution is made before the time for filing creditors claims has expired, a bond must be furnished by the distributees.

B. When a bond is not required by the court, the order must include a finding that the time for filing or presenting claims against the estate has expired and that all uncontested claims have been paid or are sufficiently secured.

C. An allegation and showing will be required concerning notice to any additional known or reasonably ascertainable creditors pursuant to *Tulsa Professional Collection Services, Inc. v. Pope* (1988) 485 U.S. 478. Unless such notices have been given, the time to file claims will not be considered to have expired and the court will impose a bond upon each distributee of the preliminary distribution.
(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 4.17.7

Receipts on Preliminary Distribution

Receipts for property received in Preliminary distributions must be filed with the court before the final account, and follow the requirements of Rule 4.17.8.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 4.17.8

Receipts on Final Distribution

A. Receipts for property received on final distribution must be signed by the (1) distributee, unless there is a showing of good cause why the distributee cannot sign the receipt, (2) the attorney-in-fact for the distributee under a valid power of attorney where a true copy of the power of attorney is attached to the receipt and the attorney-in-fact certifies under penalty of perjury that the power of attorney is in full force and effect, or (3) the conservator or guardian of the estate of the distributee, or (4) the personal representative of the estate of the distributee.

B. A receipt must be specifically itemized, giving the valuation of each asset and the total value of all the property received.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.17.9

Order of Final Discharge

The court will not sign the order of final discharge until all receipts on distribution are filed and all remaining property withheld from distribution is properly disbursed and/or distributed by the personal representative as alleged in a separately filed declaration.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.17.10

Requests to Withhold Funds from Final Distribution

In every case where the Petitioner requests to withhold $10,000 or more, the Petitioner must specify the items for which the withholding is required, together with an estimate of each item.
(Adopted 1/1/2006; Rev. 1/1/2009)

Rule 4.17.11

Supplemental Accountings with Final Discharge

Unless the accounting is waived by the heirs or beneficiaries, supplemental accountings must be submitted for review when more than $2500 and less than $10,000 is withheld at the time of the final accountings. For withheld amounts of $10,000 or more, the court will set a review date to ensure that a supplemental accounting has been filed and set for hearing. Notice of the hearing on the supplemental accounting must be given to all persons entitled to notice of the hearing of Final Accounting. The starting balance of the supplemental accounting must be for the amount withheld only.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 1/1/2005; Rev. & Renum. 1/1/200; Rev. 1/1/2009)

CHAPTER 18
CONSERVATORSHIPS

Rule 4.18.1

Conservatorship Orientation Program

All conservators, excluding limited conservators of the person, who are not Private Professional Conservators as defined by Probate Code section 2341, must complete an education class as ordered at the time of their appointment as conservator. Classes must be completed within six months of appointment as a conservator, and a certificate evidencing completion must be filed with the court. Classes must be designed to explain the duties and responsibilities of Conservator of the Person and/or Estate and include information on healthcare, safety, living arrangements, management of assets, accountings and other legal obligations. A list of providers is available in the Probate Business Office. Failure to complete this requirement may be grounds for removal as ordered by the court. In addition to removal, failure to comply with these requirements may result in the imposition of sanctions.
(Adopted 1/1/2006)

Rule 4.18.2

Temporary Conservatorships

A. The court will not consider the appointment of a temporary conservator ex parte and will set the petition for hearing with a five day notice requirement unless proper showing is made as follows:

1. Good cause and an immediate necessity is affirmatively shown in a declaration containing competent evidence based on personal knowledge;

2. The proposed conservatee is present or if the proposed conservatee is unable to attend;

a. the proposed conservatee is hospitalized, has notice of the ex parte hearing and its purpose, and cannot attend for medical reasons that must be supported by a physician’s declaration;

b. evidence is presented that the proposed conservatee has notice of the ex parte hearing and its purpose and cannot appear; or,

c. in appropriate circumstances where capacity is not an issue, the proposed conservatee has consented and waived notice.

3. There are no relatives in equal or closer relationship than the petitioner, or such relatives nominated or consented to petitioner's appointment.

4. Petitioner must state in the Ex Parte Application whether there are known objectors.

a. If there are known objections, absent good cause, the matter will be set for a noticed hearing; or

b. If the petitioner desires to proceed without notice to a known objector, the petitioner must demonstrate by competent evidence the need to waive notice based on good cause.

5. Unless good cause is shown, the report of a court appointed attorney is on file.

6. Absent good cause, 24-hour notice has been given to the proposed conservatee's spouse or domestic partner, and all relatives within the second degree.

7. In matters where the application is made primarily to make health care decisions a declaration is on file by petitioner and court appointed counsel setting forth reasons why temporary conservatorship is more appropriate than proceeding under Probate Code section 3200 et seq.

B. If it appears that a temporary conservator is necessary, but that notice should be given to the proposed conservatee or any other person, the petition will be set for the first conservatorship calendar not less than five days away and should be walked through Probate Examining by counsel to assure proper setting.

C. No initial appointment of a temporary conservator may exceed a period of 30 days, but such appointment may be extended by the court to the date of the hearing on the permanent conservatorship. If a continuance of the hearing on the general conservatorship petition is necessary, counsel may appear at the hearing and request the extension of the temporary conservatorship. Alternatively a request to extend may be made ex parte, if the request is presented before the expiration of the initial appointment and there are no objections.

D. Good cause must be shown for special powers to be granted without a hearing. When special powers are sought, they must be specifically requested and supported by factual allegations.

E. Good cause is defined as those circumstances where it is essential to protect the proposed conservatee, or the proposed conservatee's estate, from immediate and substantial harm.

F. Whenever an ex parte temporary conservatorship is sought and a waiver of notice is requested, or presence of the proposed temporary conservatee is not excused by statute, it must be accompanied by a proposed order which includes factual findings reflecting the substantial harm posed to the proposed conservatee, or the proposed conservatee's estate.

G. The court must set a review hearing within six court days whenever an ex parte temporary conservatorship is granted. The court may reconsider the propriety of the temporary conservatorship, or other matters as appropriate, at the review hearing.

H. A petition for appointment of a temporary Conservatorship of the person or estate or both must be made in a separate pleading. It may not be included in, and may not be filed prior to the filing of, the petition for appointment of a permanent conservator.

I. All petitions for temporary conservatorship must be submitted with an extra copy of the petition and all related documents for the Court Investigator.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.18.3

Petition for Appointment of Conservator; Allegations and Notice Requirements; Supplemental Information

A. All petitions for appointment of conservator must state whether or not there is presently a conservator appointed under the Lanterman-Petris Short Act ("LPS") and, if so, the number of the Mental Health action, the name of the conservator, when the conservatorship expires, and that court's findings regarding the proposed conservatee's ability to complete the affidavit of voter registration.

B. If an LPS conservatorship exists, notice must be given to:

The LPS conservator;

Counsel representing the LPS conservatee; and

All persons otherwise required by Probate Code section 1460 et seq.

C. When the conservatee has a spouse, the petition must allege whether any property is community property. If community, the petition should state what portion is to be included in the conservatorship. (Prob. Code, § 3051.)

D. Children and grandchildren are relatives within the second degree. The petition must allege the existence or the nonexistence of any children or grandchildren and must list their names, addresses, relationship to the proposed conservatee, and whether they are minors or adults (e.g., "John Smith, adult grandchild," or "John Smith, grandchild age 13").

E. Unless the petitioner is a bank, any petition for appointment must be accompanied by the forms required by the California Rules of Court, rule 7.1050, Investigator Referral and, the Duties and Liabilities form. The petition will be rejected for filing if required forms are not submitted with the petition. A copy of such forms must also be

filed for the Court Investigator who must review the allegations in the supplemental information. A temporary appointment will not be made unless the petition for permanent conservatorship which is to be filed is accompanied by such supplemental information.

F. Any petition for appointment of conservator must disclose whether the proposed conservator is a private professional conservator (PPC), their current licensing status, the expiration date of their current registration and their state license number.

G. The Petition for Conservatorship must state, with specificity, evidence to support a finding of lack of capacity to make decisions or do other acts as required by Probate Code section 811. The petition should set forth evidence attesting to a deficit in at least one of the mental functions set forth in Probate Code section 811. This evidence may, however, be set forth in a separate declaration attached to the petition.

H. When the proposed conservatee is, or was, the subject of a guardianship, the "Petition for Appointment of a Conservator" must include the case number of the prior guardianship, the name of the prior guardian(s), and the name(s) of the attorneys for the prior guardian(s) and ward, if any.

I. When the petitioner, or the proposed conservator, also serves as the trustee of a trust in which the conservatee has a beneficial interest, the existence of the trust, and the petitioner or proposed conservatee's status and interest therein must be disclosed in the petition.

J. The Petition for Conservatorship must state, with specificity, evidence to support a finding that petitioner has standing pursuant to Probate Code section 1820. The court generally considers an "interested person" and/or "friend" to include the proposed conservatee's physician, accountant, stockbroker, neighbor, or other such acquaintance. (Prob. Code, § 1820, subd. (a)(5).) Where petitioner's relationship to the proposed conservatee may not confer standing sufficient to meet this criteria, notice of the proceedings shall be given to the Public Guardian.

K. Whenever the petitioner is not a family member a separate verified declaration containing the following information must be submitted:

1. The due diligence efforts of the petitioner to locate family members, friends and neighbors, and to ascertain the proposed conservatee's preferences in appointing a conservator, or explain why it was not feasible to do so.

2. The efforts of the petitioner to discuss with family members and friends the proposed conservatee's preferences in appointing a conservator.

3. A description of the petitioner's prior relationship, and contacts with, the proposed conservatee. If the petitioner was not nominated by a relative, or the proposed conservatee, the petitioner must set forth the specific circumstances under which he or she became involved with the proposed conservatee.

L. When filing a petition for the appointment of a conservator or successor-conservator, the petitioner must file an extra copy of the petition and all subsequent documents regarding the petition for use by the Court Investigator.

(Adopted 1/1/1990; Rev. 1/1/1991; 7/1/1996, Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.18.4

Reserved for Future Use

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1995; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2007; Del. 1/1/2009)

Rule 4.18.5

Capacity to Give Informed Consent for Medical Treatment

A. Any petition seeking a determination that the proposed Conservatee lacks capacity to give informed medical consent must contain facts to support the finding and must be accompanied by a declaration of a licensed physician, or, where appropriate, an accredited practitioner, as to Conservatee's lack of capacity to consent to medical treatment.

B. Medical authority for a limited conservator is granted pursuant to Probate Code section 2351.5, not Probate Code section 2355, and the Petition for Limited Conservatorship may not ask for 2355 authority.

C. If the conservatorship petition is premised on the need to exercise medical authority, the petitioner must explain why a Probate Code Section 3200 Petition is not the least restrictive alternative.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1996; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008)

Rule 4.18.6

Dementia Authority

A. A request for dementia authority per Probate Code section 2356.5 may be contained in the petition for appointment of conservator, a petition for exclusive medical authority, or in a petition asking only for dementia authority.

B. A petition for appointment of conservator which includes such request must be a petition for appointment of conservator of the person, must also include a request for exclusive medical authority and must have sufficient specific examples and allegations to be clear and convincing evidence of dementia as defined by the last edition of Diagnostic and Statistical Manual of Mental Disorders (DSM IV).

C. A Capacity Declaration – Conservatorship (GC-335) and Dementia Attachment (GC-335A) must be filed in support, but must address each required finding per Probate Code section 2356.5, subdivision (f)(3), and therefore an additional declaration of physician may be furnished.

D. A request for dementia authority can be contained in a petition for exclusive medical authority if there is a conservator of the person in place.

E. A request for dementia authority only can be the subject of a petition where there is already a conservator of the person who has exclusive medical authority.

F. Counsel will be appointed to represent the conservatee or proposed conservatee in any case where dementia authority is requested and a written report from that attorney must be filed five days in advance of the hearing before the court acts on the dementia request. (See also Rule 4.18.12.)

G. A request for placement in a secured facility must indicate the specific facility and a showing it is the least restrictive placement available.

H. A request to authorize medications must show the specific medications currently prescribed, however no further relief will be required if changes to medication are required.

I. Dementia authority will not be granted where the petitioner is the proposed conservatee as there is a conflict in a person having sufficient capacity to file a petition and the court finding dementia per DSM IV.

J. The court finds that notice required on a petition for appointment of conservator is sufficient notice of a request for dementia authority and an additional "Order Prescribing Notice" need not be submitted.

K. A Petition for exclusive medical authority which includes dementia authority, or a petition for dementia authority, requires an order prescribing notice. The court will require 15 days notice, with a copy of the petition, to the conservatee, conservatee's spouse, domestic partner, and relatives in the second degree. An "Order Prescribing Notice" need not be submitted in addition to the requirements of this subsection.

(Adopted 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.18.7

Independent Powers: Sale of Residence

A. The court will grant individual powers as authorized by Probate Code sections 2590 and 2591 only in response to specific allegations regarding their necessity.

B. Where power is granted to sell real property, the court requires that the sale be returned to the court for overbidding and confirmation. If independent power of sale of real property is requested, an allegation must be made whether the real property is conservatee's residence, as described in Probate Code section 2540.

C. The independent powers granted must be set forth in the order and in the letters of conservatorship.

D. If conservatee's present or former residence, including a mobile home or recreational vehicle, is to be sold, authority must first be obtained from the court. The petition must indicate the conservatee's support or opposition, including whether the conservatee opposed the sale in the past, the necessity for the sale, whether conservatee has the ability to reside therein and alternatives to the sale. In addition, the tax issues are to be discussed, particularly the impact of capital gains tax.

E. The court will consider the petition for authority to sell a residence on an ex parte basis, upon showing of immediate need, if there are no requests for special notice or if the persons requesting special notice waive notice and it is shown the conservatee does not object or does not have the capacity to object.

(Adopted 1/1/1990; Rev. 1/1/1991; Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.18.8

Consent of Conservator to Act

When a proposed conservator is not petitioning, written consent of the proposed conservator to act must be on file before the appointment is made.

(Adopted 1/1/1990; Rev. 7/1/1991; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.18.9

Court Investigation/Response to Court Investigator's Report

A. Unless an exception to the general requirements regarding a Court Investigator's Report applies (i.e. as provided in California Probate Code sections 1826, 1848 or other appropriate section), a Referral for Court Investigator must be filed with the Petition for Appointment of Probate Conservator**.**

B. No Order Appointing Court Investigator is required because the court has made a general order appointing the court investigators for all cases.

C. If it is alleged that the petitioning or nominating proposed conservatee will attend the hearing, but before the hearing becomes unable or unwilling to attend, the petition must be supplemented, and the referral must be filed. Counsel must call the Court Investigator to alert him or her of the need for an investigation. If this is not accomplished at least ten days before the hearing date, a continuance ordinarily will be required.

D. Petitioner must cooperate with the Court Investigator in the preparation of a Court Investigator's Report and must use all reasonable efforts to timely provide appropriate information as requested by the Court Investigator.

E. When an investigator's report or report of the court appointed attorney for the conservatee is mailed to counsel and/or the conservator subsequent to the establishment of the conservatorship, the conservator must promptly file a report responsive to the concerns addressed by the investigator or court appointed attorney.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1991; Rev. 7/1/1995; Rev. 7/1/1996; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.18.10

Limited Conservatorships

Upon a petition for appointment of limited conservator, and under proper circumstances, the court may appoint a general conservator for a developmentally disabled person.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.18.11

Bond Requirements

A. Cash may be blocked as provided in Rule 4.7.11, and such blocked funds excluded from the bond amount.

B. Bond Review Hearing. If, at the hearing for the appointment of a temporary or permanent conservator of the estate, the proposed conservator does not have sufficient information regarding the proposed conservatee's income or assets to enable the court to set an appropriate bond, the court may appoint the temporary or permanent conservator and continue the hearing to a specified date so that the conservator can provide the required information and a proper bond can be set. Where appropriate, the court may place limitations on the letters of conservatorship until a proper bond has been posted. This rule also applies to appointments of guardians of the estate.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.18.12

Appointment of Counsel for Conservatee or Patient

A. The court will appoint counsel for the person who is the subject of a conservatorship petition as required by law or for good cause

B. Counsel appointed by the court to represent conservatees must prepare and file a written report to the court at least five days prior to the hearing. Said report must:

1. Make a recommendation as to the issues at hand.

2. Document the services performed by counsel.

3. Include a fee request in the prayer.

4. Include a recommendation regarding the ability or inability of the conservatee or proposed conservatee to pay the fee, in order to enable the court to make a finding regarding such ability or inability, and to order payment by such conservatee or by the County of San Diego.

5. Make a recommendation whether or not counsel may be discharged. In the case of an appointment under Probate Code section 2356.5, counsel will not be discharged.

6. State that Counsel has reviewed Rule 4.21.7 herein regarding conflict of interest in a conservatorship proceeding.

7. State that Counsel has met the qualifications and continuing education requirements pursuant to California Rules of Court, rule 7.1101.

(Adopted 1/1/1990; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.18.13

Successor Conservator

Appointment of a successor conservator does not require service of a citation or personal service of notice on the conservatee, nor does it require a physician's affidavit of inability to attend the hearing or an 811 declaration per Rule 4.18.3, subsection G. Unless the petition for appointment of successor states that the conservatee will attend the hearing, it will be necessary to file a Referral for Court Investigator. The investigator must interview the conservatee and file a report before the hearing. The notice of hearing and a copy of the petition must be served on the conservatee, either personally or by mail, at least 15 days prior to the hearing, and other notice given pursuant to Probate Code section 2683.
(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.18.14

Conservatorship Assessments

Probate Code section 1851.5 provides that an assessment will be made against the estate of each conservatee for the cost of any investigation made by the Court Investigator under appropriate statutes. The assessment for investigations by the Court Investigator is set by the court. The assessment is due and must be paid immediately upon receipt of the investigator's report. The probate examiner will routinely check for the payment of assessments when any petition in a conservatorship is before the court and no order will be processed until all assessments are paid unless the court grants a request to defer payment for good cause shown.
(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1995; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.18.15

Investments by Conservator

A. In accordance with Probate Code section 16040, investments by conservators must be prudent and in keeping with the size and character of the conservatee's estate.

B. The court will not approve the following:

1. Unsecured loans.

2. Loans to relatives.

3. Bonds or obligations of foreign governments or corporations.

C. The court will not authorize investments in real estate, either by purchase or encumbrance, unless supported by an appraisal by the court-appointed probate referee or other qualified appraiser.

D. A conservator may continue managing investments specified in Probate Code section 2459, subdivision (b), which pre-existed the conservatorship, but may not make additional investments without court authority. A conservator may petition the court for instructions and authority to make a specific investment, including investments in Certificate of Deposit Account Registry Service (CDARS.)
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006; Rev. 1/1/2007)

Rule 4.18.16

Substituted Judgments in Conservatorships Probate Code section 2580

Where the petitioner seeks to establish a trust with conservatorship assets under substituted judgment, the trust must provide, unless otherwise ordered, that the trust is subject to continuing court supervision under the Probate Code. Absent an order of the court to the contrary, all trust assets must remain within the State of California. In the case of securities, cash and other items of intangible personal property, the assets must remain on deposit with an entity registered with the California Secretary of State to do business in California.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2004; Rev. & Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.18.17

Accounts and Reports of Conservators

A. All accounts must follow the format prescribed in these rules for decedents' estates and in Probate Code sections 2620 and 1060-1064 and California Rules of Court, rule 7.575, unless ordered by the court.

B. Reports must contain the current address and whereabouts of the conservatee, and describe the conservatee's status and condition.

C. Reports must reference the amount of the current bond and state whether additional bond is necessary to cover unblocked personal property plus one year's estimated income.

D. The report must also show any blocked bank accounts.
(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.18.18

Notices

A. Notice must be given to a former conservatee or the personal representative of a deceased conservatee upon the settlement of the final account.

B. In circumstances where the Conservatee does not have a spouse or domestic partner, or such person is incapacitated, notice must be given to all relatives within the second degree.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2009)

Rule 4.18.19

Reserved for Future Use

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Del. 1/1/2009)

Rule 4.18.20

Reserved for Future Use

(Del. 1/1/2008)

Rule 4.18.21

Fees for Conservators and Counsel

A. The court will not grant a fee request without an accounting absent good cause.

B. Fees for court appointed counsel must be requested at the hearing as part of counsel's report.

C. Requests for compensation must be set forth in a separate declaration, and must be in accordance with California Rules of Court, rules 7.751 and 7.702.

D. Conservators must submit a completed Probate Court approved "Fee Request Declaration" with all requests for compensation in excess of $750.00.

E. The court will not consider fee requests for work performed during a prior accounting period that were not included in the prior account. Conservators and counsel wishing to delay their request for fees to a subsequent accounting period must request and obtain the consent of the court and include such authority in the prior order approving account.

F. The court may consider fee requests for work performed during the current accounting period, and fees related to the report and accounting for the current accounting period.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.18.22

Required Form of Accounts

A. The first accounting must be for a period not to exceed one year from the date of appointment.

B. A final account must set forth a list of assets on hand for distribution and the specific proposed distribution. If distribution is proposed pursuant to Probate Code section 13100, the necessary affidavits must be filed before the court orders distribution.

C. The final account must allege whether or not all income and other taxes which became due and payable by conservatee during the period of the conservatorship have been paid.

D. In the final account, an allegation must be made as to whether or not the conservatee or predeceased spouse, if any were Medi-Cal recipients and if so, appropriate notice must be given per Probate Code section 215, unless distribution is to a personal representative of a deceased conservatee.

E. In all cases, notice must be given to all persons entitled to receive property.

F. All accounts must disclose the existence of a trust where the conservatee is a vested beneficiary, the current fair market value of the conservatee's interest, whether the conservator is a trustee, whether counsel for the petitioner is also attorney for the trust and/or trustee, and whether fees approved in the account are to be paid from the trust.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.18.23

EADACPA Proceedings

When a civil action has been filed which cites the "Elder Abuse and Dependent Adult Civil Protection Act" (EADACPA), pursuant to Welfare & Institutions Code sections 15600 et seq., that action will be transferred to the Probate Court for litigation as required by Rule 2.4.10.

(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 4.18.24

Court Ordered Review Hearings

A. At the hearing approving a Petition for Conservatorship of the Person or Estate, the court will set compliance and review hearing dates as follows:

1. A 90 day compliance date and 120 day review date. The conservator of the Person is to provide proof of the filing with the court of a Level of Care Evaluation (Prob. Code, § 2352.5) and the Notice of Rights of Conservatee (Prob. Code, § 1830) at or before the compliance date. The conservator of the Estate is to file an inventory and appraisal (Prob. Code, § 2610) at or before the compliance date. Upon the filing of the required materials, the review hearing will be taken off calendar. Should the conservator fail to fully comply with the above referenced statutes, the conservator will be required to appear at the review hearing date.

2. A 365 day compliance date and a 395 day review date for Estates. The Conservator of the Estate is to file the account prior to the compliance date. This report is to coincide with the Court Investigator's Report (Prob. Code, § 1850, subd. (a)(2)). Upon the filing of the account, the review hearing will go off calendar. Upon review of the Court Investigator's Report, the court may pre-approve the Report and set the date for the next review hearing; an appearance will not be required.

B. If the materials required by paragraph A above have not been filed by the date ordered by the court, the conservator and counsel, if any, must appear at the review hearing and must show cause why the conservator should not be suspended, removed, or otherwise sanctioned pursuant to Code of Civil Procedure section 177.5 or 575.5 and/or why counsel should not be appointed to represent the conservatee. The court, in its discretion, may make additional orders as appropriate.

(Adopted 1/1/2008; Rev. 1/1/2009)

Rule 4.18.25

Waiver of Account Involving Public Benefit Payments

The court may enter an order that the Conservator need not present an account pursuant to Probate Code section 2628. The order may be obtained, in advance of, or subsequent to, the account due date, by filing and serving a petition requesting an order waiving account. The petition must contain allegations for the current account period as required by Probate Code section 2628, subdivision (b). If authority is granted to waive future accounts, the conservator must annually file, prior to the review hearing required by Local Rule 4.18.24, a verified declaration stating that the conditions specified in Probate Code section 2628, subdivision (b), have been met for the applicable accounting period. If the conditions have not been met for any subsequent accounting period, an account must be filed for that account period as required by Probate Code section 2620.

(Adopted 1/1/2008)

Rule 4.18.26

Petition for Transfer

All orders transferring a conservatorship matter to the superior court in another county must include the name and address of the superior court to which the case is being transferred.

(Adopted 1/1/2008; Rev. 1/1/2009)

CHAPTER 19
GUARDIANSHIPS

Rule 4.19.1

Temporary Guardianships

A. A petition for appointment of temporary guardian must be a separate pleading and may not be filed prior to the filing of a petition for appointment of a general guardian.

B. The court will require a full bond from the temporary guardian of the estate unless waived for good cause.

C. The court will not consider the appointment of a temporary guardian ex parte unless proper showing is made that:

1. An immediate necessity exists

2. The parents have received notice or good cause exists to dispense with notice

3. Petitioner knows of no objections to the petition

4. The minor is residing with the petitioner at the time the request for temporary guardianship is made.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.19.2

Petition for Appointment of Guardian: Jurisdiction

A. If there is a proceeding regarding the minor pending in Juvenile Court or Family Court, counsel must refer to the Guardianship Protocol available in the Probate Business Office.

B. When an appointment is requested for guardianship of the estate only, the petition must be filed in the Probate Court.

C. Any proposed guardian not related to the minor must disclose if they are serving as guardian for any other minors to whom they are not related.

D. Allegations that parental custody would be detrimental to the minor child, other than a statement of ultimate fact, must not appear in the petition, but may be submitted on a separate document that must be held as a separate confidential document. (Fam. Code, § 3041.)

(Adopted 1/1/1990, Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.19.3

Co-Habitant of Proposed Guardian

A. If the minor resides with the proposed guardian and the proposed guardian is co-habiting with another adult who will share in the physical custody of the minor, the court must presume that the co-habiting adult is a person having care of the minor and a copy of the petition and notice must be served by mail on said co-habiting adult.

B. Written consent of the co-habiting adult must be filed with the court.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.19.4

Proceedings to Have Child Declared Free From Custody and Control of One or Both Parents

Probate proceedings authorized by Probate Code section 1516.5 will be filed and heard in the Juvenile Division. The guardianship file will be consolidated into the juvenile proceedings pursuant to the request and direction of the Juvenile Court.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Rev. 1/1/2005; Rev. & Renum. 1/1/2006)

Rule 4.19.5

Investigation

A. Probate Code section 1513 requires that, unless waived by the court, in each proposed appointment of guardian, an investigation be made and a report submitted to the court. These investigations in San Diego County will be done by the Family Court Services, Health and Human Services Agency (Guardianship Unit) or the Court Investigator as follows:

(For these purposes, relative is defined by Prob. Code, § 1513, subd. g.)

1. Guardianship of the Person, or Person and Estate-Relative.

a. Submit Order Directing or Waiving Investigation to Probate Services with petition for appointment. (Fill out order, check #1.)

b. Call Family Court Services for an appointment within three days of filing. Locations and phone numbers can be found at www.sdcourt.ca.gov.

c. Follow directions received from Family Court Services.

d. At the discretion of the court, an abbreviated report may be ordered in lieu of a full investigation.

e. Hearings are set no sooner than 60 days from filing to allow Family Court Services to Prepare the investigation report.

2. Guardianship of the Person, and/or Estate-Non-Relative.

a. Per Probate Code section 1542, notice is to be given to the Director of Social Services in Sacramento and to the local agency investigating guardianships.

b. Submit the Order Directing or Waiving Investigation to Probate Services (Fill out order, check #2.) with the petition for appointment.

c. Send a second copy of the petition only to Department of Social Services, Guardianship Unit, at the address listed in their instructions. This will expedite assignment for investigation and minimize court continuances.

d. Hearings are set no sooner than 60 days from filing.

3. Guardianship of the Estate only-Relative or Non-Relative.

a. Submit Order Directing or Waiving Investigation to Probate Services. (Fill out order, check #3.) with the petition for appointment.

b. Send copy of Order Directing or waiving investigation to the Court Investigator to initiate investigation along with a completed Guardianship Questionnaire and fee.

c. If a waiver of court investigation is requested, submit the "Application for Waiver of Investigation", "Guardianship Questionnaire" and "Order Directing or Waiving Investigation" to the Probate Business Office. (Fill out order, do NOT check a box.)

d. If waiver is approved, appointment will proceed. If waiver is denied, counsel will receive a copy of the Order Directing Investigation and should contact the Court Investigator.

B. If waiver of investigation is sought, the request must be made in advance of the hearing to provide sufficient time for review and processing. At least 10 days must be allowed.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.19.6

Bond at Appointment and Accounting

A. The court will impose a bond pursuant to Probate Code section 2320 and California Rules of Court, rule 7.207, or require the funds to be placed in blocked accounts. In a guardianship, the relationship of parent does not constitute good cause for waiving bond.

B. The report and account must allege the amount of bond in effect and whether it is sufficient to cover personal property, income and recovery bond. Additional or reduced bond may be suggested as needed.

C. See Rule 4.18.11, Bond Review Hearing, which also applies to appointment of guardians of the estate.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.19.7

Additional Powers

A. The court may, on the petition of the guardian of the estate, either at the time of appointment or later, grant additional powers to the guardian as authorized by sections 2590 and 2591 of the Probate Code. Such powers are not granted unless sufficient reason is shown for their necessity. The court will grant only those additional powers necessary or proper under the specific circumstances of each case. The powers so granted must be set forth in the order and in the letters of guardianship.

B. A petition to transfer the minor to another state, once approved by the court, will be continued for a 60 day review. Upon showing a guardianship has been established in the new state of residence, the matter will be taken off calendar.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.19.8

Investments by Guardian

A. See Rule 4.18.15.

B. The guardian should also consider the circumstances of the estate, indicated cash needs and the date of prospective termination of the guardianship.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.19.9

Timely Accounts and Reports

A. The court will consider, on an ex parte basis, a 30 day extension of the time to file an account pursuant to Probate Code section 2620.2. Failure to file a timely accounting and set a hearing, as prescribed in Probate Code section 2620.2, may be deemed contempt of court and subject the guardian to sanctions pursuant to Code of Civil Procedure section 1209 or 177.5.

B. If funds are maintained in a blocked account, the court may order proof of continued deposits in lieu of a full accounting.

C. Every guardian of the person of a minor must file a report on the status of the guardianship. This report is due by its "compliance date" or not later than one year after the initial appointment. Thereafter, reports will be due annually. Failure to file the report and appear in court when required to do so may constitute "good cause" for the court to remove the guardian from his or her office.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.19.10

Required Form of Account

A. Accounts must follow the format prescribed in Probate Code sections 1060 et seq. and 2620, subdivision (a); California Rules of Court, rule 7.575; Local Rule 4.15.1 and the confidentiality and labeling prescribed by Local Rule 4.15.2, subsection D.

B. Where a guardian accounts for assets of more than one minor the accounting for each minor must be set forth separately within one report.

(Adopted 1/1/1990; Rev. 7/1/1995; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.19.11

Report to Accompany Accounting

A. The report of guardian must give the current age, status and whereabouts of minor.

B. The guardian's current address must be set forth in the report.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.19.12

Request for Use of Minor's Assets

A. If a minor has a living parent or receives or is entitled to support from another source, prior court approval must be obtained before using guardianship assets for the minor's support, maintenance or education pursuant to Probate Code section 2422.

B. A request to expend funds may be made at the time of appointment of guardian, in a separate noticed petition, or included in an accounting and report.

C. The petition must set forth in detail the parents' financial inability or other circumstances which in the minor's interest would justify use of the guardianship assets.

D. The request must be for a specific and limited purpose and for a limited period of time.

E. The petition must be accompanied by a statement describing income, expenses, assets and liabilities of any parent and must include the receipt of Social Security if applicable.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.19.13

Fees and Commissions in Guardianships

A. The court will not grant a request for fees without an accounting absent good cause.

B. Fees for court appointed counsel must be requested at the hearing as part of counsel’s report.

C. Requests for compensation must be in accordance with California Rules of Court, rules 7.751 and 7.702.

D. The court will not consider fee requests for work performed during a prior accounting period that were not included in the prior account. Guardians and Counsel wishing to delay their request for fees to a subsequent accounting period must request and obtain the consent of the court and include such authority in the prior order approving accounting.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006)

Rule 4.19.14

Court Appointed Attorney and Guardian ad Litem

A. Any party petitioning for appointment of a guardian ad litem may suggest an independent individual to be appointed or request the court make such appointment. Due to the potential conflicts of interests, parents asserting individual claims or defenses may not serve as guardians ad litem for their children, absent a court order to the contrary. Appointment of a guardian ad litem may be requested by ex parte petition.

B. Any report required of a court appointed attorney or guardian ad litem must be filed no later than five days before the scheduled hearing.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.19.15

Petition for Transfer

All orders transferring a guardianship matter to the superior court in another county must include the name and address of the superior court to which the case is being transferred.

(Adopted 1/1/2008)

CHAPTER 20
TRUSTS

Rule 4.20.1

General

In all trust matters where an issue involves the interpretation of or change to the trust, the party seeking an interpretation or change to the trust shall lodge a copy of the trust with the court. By ex parte application, a party may seek to limit the scope of the lodgment.

(Adopted 1/1/2007)

Rule 4.20.2

Accounts

A. Accounts filed by trustees must conform to these rules and Probate Code sections 1060-1064.

B. The value of the property set forth in the decree of distribution, or a reconciliation thereof, must be the starting balance of the first account.

C. Unless the testator provides otherwise in the will, or the court specifically orders otherwise, a trust created by will executed on or after July 1, 1977, is not subject to the continuing jurisdiction of the court and the court will require an accounting and report only when the same has been requested by someone beneficially interested in the trust.

D. Testamentary trust accounts and related proceedings must be filed in the estate case; but an inter vivos trust must be filed as a new proceeding, even if it is the beneficiary of a pour-over will.

(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2003; Rev. 7/1/2003; Renum. 1/1/2006; Rev. & Renum. 1/1/2007)

Rule 4.20.3

Petition to Determine Title in Trust Matters (Probate Code section 850-*Heggstad*)

In trust matters filed with the court to determine the title to property under Probate Code section 850, the following allegations are required to be set forth in the petition:

A. The vesting of each asset at all relevant times;

B. Evidence that each asset was placed in trust;

C. Evidence of every transaction affecting title to each asset in question during the relevant time;

D. Where a transaction takes legal title to an asset out of the trust or occurs when title is not held by the trustee, evidence to overcome the inference that the Trustor intended that the transaction be considered a non-trust transaction;

E. The value of each asset to be transferred.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2007)

Rule 4.20.4

Identification of Persons Entitled to Notice

In addition to the requirements of Probate Code section 17201 to state the names and addresses of each person entitled to notice of a trust petition, the petition must also contain the relationships of those persons to the trustor(s). The trustee will likewise be identified by name, address and relationship to the trustor(s).

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2007)

Rule 4.20.5

Trusts Established Before Decree of Distribution

A. Probate Code section 6321 provides that a decedent may designate as beneficiary of a life insurance policy a trustee named in decedent's will. The statutes also apply to certain employment and other benefits which may be payable to such a trustee.

B. A trustee named in a will admitted to probate may be appointed before the decree of distribution is made, upon the filing of a petition. As to such a petition, the court will require 30 days' notice to beneficiaries.

C. Where a vacancy exists in the office of the trustee before distribution, a trustee not named in the will may be appointed upon the filing of a petition and proper notice pursuant to Probate Code section 17200.

D. The order appointing the trustee must contain all the terms of the trust and the trustee must have all the powers and duties in respect to the trust corpus set forth in the order.

E. Any matters governing the trust not specifically covered by these sections must be governed by the provisions of Probate Code section 15000 et seq.

F. If no trustee claims the trust corpus or can qualify to receive the same and there is no indication in the will as to where the proceeds are to go, a petition to determine heirship may be filed to determine to whom distribution shall be made.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Renum. 1/1/2007)

Rule 4.20.6

Special Needs Trusts

A. With respect to Special Needs Trusts and Trusts sent to the Probate Court for review pursuant to Local Rule 2.4.6(c), the following must be included in the trust:

1. Provisions for appointment of successor trustee on approval of the Probate Court.

2. A payback provision must be inserted as required by title 42 of the United States Code section 1396(p)(4)(a).

3. Notice requirements on termination or death of beneficiary, and for any additions to the trust must be included.

4. Dispositive provisions must include disposition to heirs at law after payback required by title 42 of the United States Code section 1396(p)(4)(a).

B. Once the trial court has sent the trust to the Probate Court for review, it will be assigned to an Examiner for review and processing.

C. If the Probate Court approves the Special Needs Trust or Trust, a determination will be made whether the trust must be returned to the Probate Court to be brought under the Probate Court's jurisdiction. The trial court will make an appropriate order thereon, and the trustee of the newly established trust must file a "Review of Compliance with Probate Code section 3602 or 3611" with the Probate Court within 60 days.

D. A Special Needs Trust or Trust brought under the jurisdiction of the Probate Court will be assigned a new Probate case number and set for hearing. First appearance fees will apply. Any further trust proceedings and bonds must be filed under the new Probate case number. Petitioner will include a copy of the Special Needs Trust and the order establishing the trust with the petition which opens the new trust case.

E. A Special Needs Trust or Trust established by Probate Code sections 2580 and 3100 must include the same requirements as listed in rule 7.903 of the California Rules of Court and as listed in subsection A. (1-4) above.
(Adopted 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008)

Rule 4.20.7

Fees and Commissions in Trusts

A. A separate declaration setting forth the information required by California Rules of Court, rule 7.756 must accompany any request for approval of fees and may not be included in the body of the petition. The trustee must include the hourly rate upon which the fee request is based. Institutional trustees seeking approval of fees premised on fee schedules must also submit their published fee schedule for the period involved.

B. Attorneys' fee requests must comply with California Rules of Court, rule 7.702.

C. On petition the court may authorize periodic payments on account to the trustee. The petition must describe the services to be rendered on a periodic basis, the value of the services to be performed, the method of calculating the value, and the reason why authority to make payments is requested. In fixing the amount of the periodic payment, the court must take into account the services to be rendered on a periodic basis and the reasonable value of such services. The trustee may make payments pursuant to the court's order only if the services described in the petition are actually rendered. The payments made are subject to review by the court upon the next succeeding account to determine that the services were actually rendered and that the amount paid on account was not unreasonable. If the court finds that the amount paid on account was either excessive or inadequate in view of the services actually rendered, the court may make such additional orders as appropriate.

D. In a trust accounting, an allegation must be made as to the total amount of attorneys' fees paid during the applicable accounting period.
(Adopted 1/1/2007; Rev. 1/1/2009)

Rule 4.20.8

Petitions for Modifications or Termination of Trusts

A. Petitions seeking the amendment of a trust must set forth the portion of the trust to be amended by designating language to be deleted in strikeout format, and language to be added by underlining.

B. Petitions seeking authority to modify or terminate a trust pursuant to Probate Code section 15403 must affirmatively allege that the trust is not subject to a valid restraint on transfer of the beneficiary's interest as provided in Probate Code section 15300 et seq.

C. Petitions seeking to amend the provisions of a trust relating to the identification of a successor trustee must contain a provision requiring a trustee's bond unless the petition contains allegations upon which the court may make the finding required by Probate Code section 15602, subdivision (b).
(Adopted 1/1/2008)

CHAPTER 21
MISCELLANEOUS

Rule 4.21.1

Withdrawal of Counsel of Record

The following provisions apply to attorneys appointed by the court to serve as appointed counsel and guardians ad litem and also attorneys for guardians, conservators, personal representatives in estates, and trustees of trusts under court supervision.

A. Counsel wishing to withdraw from a probate proceeding as counsel of record must file and serve a Motion to Withdraw in accordance with the provisions of Code of Civil Procedure section 284 and California Rules of Court, rule 3.1362.

B. The filing in the case file of a substitution in pro per without prior court approval will not effectively relieve the counsel of record. Such counsel will only be relieved by substitution of another counsel or by court order upon showing that the person wishing to act in pro per is not precluded from doing so by virtue of his or her capacity in the pending proceeding. See, for example, *Ziegler v. Nickel* (1998) 64 Cal.App.4th 545. Court approval may be obtained by noticed motion.

C. Motions for withdrawal where a bond has been filed by a surety must be accompanied by proof of service of the Notice required by Probate Code section 1213.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2007)

Rule 4.21.2

Appointment of Probate Referees

A. Probate referees will be appointed in rotation.

B. A probate referee may be designated out of rotation where the property has already been appraised by the probate referee or interests in the property are part of two pending proceedings. Examples of such proceedings would be the conservatorship of husband and wife, simultaneous deaths or death of husband and wife within one year of each other, decedent's estate following conservatorship, guardianships of siblings and court proceedings following non-judicial proceedings.

C. A declaration must be presented with the order designating probate referee which sets forth the relevant circumstances.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.21.3

Reserved for Future Use

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Del. 1/1/2009)

Rule 4.21.4

Settlements Involving Charities

The Attorney General is a party to and is entitled to notice of probate matters involving interests of charities. Attention is directed, for example, to Government Code section 12591, as well as to the Probate Code.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.21.5

Dismissal of Proceedings

A. Proceeding May Not Be Dismissed. Once a case number has been assigned to a probate estate, conservatorship, guardianship or trust proceeding, the entire proceeding may not be dismissed, except upon duly noticed motion, and order of the court.

B. Individual Petitions. A petition may be dismissed only with proper notice and upon an order of the court. Requests for dismissal, with or without prejudice, may be made by the petitioner either in writing or orally at any time prior to the commencement of trial. The court considers notice adequate if given to the persons entitled to notice of, and in the manner provided for, the petition for which dismissal is sought. The court may, upon good cause shown, waive or shorten the notice period as may be appropriate.

C. "Off Calendar." A petition may be taken "off calendar" by the petitioner or by order of the court. An order taking a petition "off calendar" vacates all future hearing dates for that petition, although the petition remains a pending proceeding. A petition may be re-set for hearing only upon the written, signed and verified request of the petitioner filed with the court no later than three months from the hearing date previously taken off calendar. A petition may not be re-set for hearing unless all defects, with the exception of notice, have been cured. Proof of proper notice of the new hearing date must be provided in accordance with applicable provisions of law. Proceedings that have been taken off calendar are subject to dismissal for lack or delay in prosecution in accordance with the Code of Civil Procedure section 583.110 et seq.

D. Objections and Responses. An objection and/or response may be withdrawn by the party originally filing it upon filing of a verified statement of withdrawal, and providing notice of such withdrawal to all persons entitled to notice of the original filing.

E. Objections to Dismissal or Withdrawal of Objections/Responses. Any party, or interested person, may object to the dismissal or withdrawal by filing opposition within fifteen days of notice of the request for dismissal or withdrawal. The court may set a hearing on the request for dismissal or withdrawal, or enter an order based upon the pleadings.

F. Procedure for filing of Request to Dismiss. A party seeking to dismiss a petition must file the appropriate pleading or form requesting dismissal, and serve the same with the notice required herein.

(Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.21.6

Declaratory Relief Petitions (Prob. Code, § 21320)

A. A copy of the proposed, unsigned and unverified petition marked "proposed" below the caption, must be attached to the Probate Code section 21320 application**.** The Probate Code section 21320 application must be accompanied by points and authorities in support thereof.

B. If the court determines the proposed petition or a portion thereof would not violate the no contest clause contained in the instrument, a duplicate original of the proposed petition, or the approved portion thereof, signed and verified must be filed with the court and set for hearing. The wording "proposed" must be deleted from the petition to the filed.

C. The court will not grant a petition by the process of redacting or amending the underlying proposed petition.

D. If objections are filed, the matter will be set for the next available law and motion calendar not earlier than 30 days from the date of the hearing. In the North County Division, if no objections are filed, the matter will be heard as scheduled. In the Central Division, if no objections are filed, the matter will be deemed submitted to the court for decision pursuant to SDPR 4.22.5 and a ruling will be forthcoming within 30 days.

(Adopted 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.21.7

Disclosure by Conservators, Guardians, and Attorneys

Conservatees and Wards are generally not in a position to give their informed consent to representation by attorneys, or the appointment of a Conservator and/or Guardian. To avoid the appearance of a conflict of interest in duty, a Conservator, proposed Conservator, Guardian, proposed Guardian, and/or attorney who appears in matters involving a Conservatee, Ward, or their estate, must disclose all present and past relationships to the court at their earliest opportunity in the following circumstances:

A. Conservators. A person who is or has served in the past as a Conservator of the individual or estate which is the subject of the pending proceeding [Trust or Decedent's Estate] must disclose all present and past relationships.

B. Attorneys.

1. An attorney for a Conservatee or proposed Conservatee, or a Conservator or proposed Conservator, must disclose all present or past attorney-client relationships with any other person appearing in the matter.

2. An attorney for a Ward or proposed Ward, or a Guardian or proposed Guardian, must disclose all present or past attorney-client relationships with any other person appearing in the matter.

3. In complying with this rule an attorney shall not be required to violate an existing attorney-client privilege, but should consider that continued participation in the matter may constitute a violation of the Professional Rules of Conduct.

C. Guardians. A person who is or has served in the past as a Guardian of the individual or estate which is the subject of the pending proceeding (Conservatorship, Trust, or Decedent's Estate) must disclose all present and past relationships.

(Adopted 1/1/2006)

Rule 4.21.8

Reserved for Future Use

(Del. 1/1/2009)

CHAPTER 22
CONTESTED MATTERS

Rule 4.22.1

Introduction

When written objections are filed to a petition or other pleading seeking affirmative relief in the Probate Court of either Central or North County Division (herein "Probate Court"), the matter becomes a "contested matter" as the term is used in these rules. These rules apply to all contested matters. They supplement applicable general statutes and other rules of court and are intended to further the policies of the Legislature and the San Diego Superior Court for the prompt completion of probate administration and efficient resolution of disputes.
(Adopted 1/1/1993; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.22.2

Filing of Petitions and Contests and Setting Contested Matters for Hearing

All petitions, will contests and other pleadings seeking affirmative relief or adjudication by the Probate Court must be filed as soon as the petitioner knows of facts establishing a claim or the right to the requested relief. All such matters must be set for hearing by the clerk of the court as follows:

A. By Statute or Rule of Court.

B. Notice Not Prescribed. If the time for notice of hearing on a particular matter is not set forth in a statute or a rule of court, the time for notice of hearing must be 30 days.

C. Will Contests. A probate summons must be presented by the contestant and issued by the court at the time of filing of a will contest. A will contest filed before admission of the will to probate constitutes an objection to the petition to admit the will, and the hearing on the petition to admit the will must be continued to a date no less than 30 days from the date of filing the will contest, in order to allow sufficient time to complete service in the will contest. If all service, including personal service of the summons as required by law, is not completed by the date of the continued hearing on the petition to admit the will, contestant must file a Certificate of Progress (on the form approved by the Superior Court) at least two court days prior to the hearing. If service is not completed prior to the continued hearing, the court at the hearing may further continue the matter or may impose sanctions, including the dismissal of the will contest, pursuant to the civil rules of San Diego Superior Court (Division II). When service has been completed, the will contest will be set for trial or short cause hearing pursuant to these rules. The petition to admit the will may be continued until the date of trial or short cause hearing on the will contest.
(Adopted 1/1/1993; Rev. 7/1/1995; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.22.3

Service of Notice

All notice requirements on contested matters, including personal service when required, must be completed prior to the date of the hearing (whether the hearing date originally assigned to the matter by the clerk of the court or a later date if the matter has been continued). If a party on whom personal service is required has not been served timely, a Certificate of Progress (on the form approved by the Superior Court) must be filed at least two (2) court days prior to the hearing.
(Adopted 1/1/1993; Renum. 7/1/2001; Rev. 7/12/2002; Renum. 1/1/2006)

Rule 4.22.4

Filing of Objections

A person with standing may appear and object orally at the first hearing on any matter before the Probate Court. Thereafter objections, including grounds of opposition, to any petition or other pleading filed in Probate Court must be set forth in writing and filed either as required by statute or, in the absence of specific statutory requirements, by 4:30 pm at least three court days before the next scheduled hearing date on the petition or pleading. If written objections have not been filed in accordance with this rule, the court will either continue the matter to allow compliance with this rule or decide the matter as if no objection had been made, if the court, in its discretion, determines a party has been dilatory in complying with this rule.
(Adopted 1/1/1993; Renum. 7/1/2001; Rev. & Renum. 1/1/2006; Rev. 1/1/2007)

Rule 4.22.5

Determination of Contested Matters

A. General. Contested matters will be determined as set forth herein. At the earliest appropriate hearing after a contested matter is at issue, the court will determine the type of hearing required, the length of the hearing and the manner of disposition.

B. Submission Without Evidentiary Hearing. If all parties agree in writing or on the record in open court, the court may decide the matter based on the pleadings, evidentiary materials filed prior to the conclusion of the hearing, and the arguments of counsel, or as otherwise agreed.

C. Short Cause Matter Hearing. If the court determines that the matter will require an evidentiary hearing of three hours or less (a "hearing"), the court may establish guidelines to govern discovery proceedings, if any are required, and may set the matter for hearing as a "short cause" matter.

If counsel desire to submit trial briefs, they must be filed at the business office of the Probate Court and faxed (in accordance with Cal. Rules of Court, rule 2.306) or personally served on opposing counsel no later than 4:30 p.m. five count days prior to the date set for the short cause hearing.

Due to the "Short cause" nature of this hearing, the court will not entertain, receive or read responsive pleadings to said trial briefs. The trial briefs submitted are deemed sufficient to allow the parties the opportunity to state their positions regarding the contested issue(s) to be addressed at the short cause hearing. The provisions of rule 4.22.11 do not apply to short cause hearings.

D. Trial. If the court determines that the matter will require an evidentiary hearing of more than three hours (a "trial"), the court may set the matter for a case management conference (see Rule 4.22.11 below).

E. EADACPA Complaints. When filing a civil action citing the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) involving an individual whose estate or person is under conservatorship, refer to rule 2.4.9 for procedural guidelines.

F. Other Procedural Orders. If none of the foregoing procedures are appropriate for the matter before the court, the court may make any other procedural orders the court deems appropriate.
(Adopted 1/1/1993; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007)

Rule 4.22.6

Meet and Confer, Joint Case Management Report

If a contested matter is set for a case management conference, counsel must:

A. Meet and confer no later than 20 days before the case management conference.

B. File with the court a "Case Management Statement" (CM-110) as Required by California Rules of Court, rule 3.725 - FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN SANCTIONS BEING IMPOSED PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 575.2.
(Adopted 1/1/1993; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.22.7

Case Management Conference

At the case management conference, the court may take any one or more of the following actions:

A. Determine whether or not all applicable procedures have been complied with and, if not, order appropriate remedial action, including the imposition of sanctions considered appropriate in the court's discretion;

B. Set the following dates based upon review of the "Case Management Statement" (CM-110) and the representations of counsel:

1. Trial date;
2. Trial readiness conference date;
3. Discovery cut-off date;
4. Law and motion cut-off date;
5. Dates for the exchange of experts;
6. Settlement conference date, if requested (see Rule 4.22.10).

C. Make appropriate assignments and orders upon approval of a written agreement to refer the dispute to a temporary judge or to arbitration (Prob. Code, §§ 9620-9621) or to a Special Master or Referee (Prob. Code, § 1000; Code Civ. Proc., §§ 638-645.1).

D. Dispense with any of the procedures provided for herein for good cause.

E. Direct counsel to submit an order setting forth the dates and directives of the court.
(Adopted 1/1/1993; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.22.8

Joint Trial Statement

No later than five days prior to the trial readiness conference, counsel must meet and confer in person to prepare in good faith a Joint Trial Statement. The Joint Trial Statement must contain the following:

A. Summary Statement of Facts, including, where applicable, the following: date of decedent's death and dates of wills, codicils and other operative documents; identification and inclusive dates of appointment of the fiduciary (administrator, executor, conservator, trustee, etc.); names of the parties and their counsel; dates and substance of prior relevant court orders; identification of pleadings previously filed which are relevant to the action; a summary of the case so as to apprise the court of the nature of the action.

B. Statement of Uncontested Material Facts.

C. Statement of Contested Material Facts.

D. Statement of Contested Material Issues. Counsel must set forth a concise statement and comprehensive discussion of each contested issue, a list of all documents (or other tangible evidence) to be offered at the time of trial regarding each issue and a summary of the content of each such document, as required by the court. Each contested item of an account must be specifically identified. Counsel will also provide as an exhibit a copy of each appraisal and report of an expert to be offered at the time of trial.

NOTE: FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN AN ORDER EXCLUDING THE DOCUMENT, SCHEDULE, SUMMARY, REPORT OR APPRAISAL, OR TESTIMONY OF THE EXPERT AT TRIAL.

E. List of Witnesses Indicating Whether Each Witness is a Percipient or Expert Witness. Except for impeachment witnesses, the court may, in its discretion, refuse to permit any witness to testify who is not listed.

F. Index of Exhibits. Counsel must pre-mark and jointly index all exhibits numerically as court exhibits. The index must set forth the following as to each exhibit: exhibit number; by whom offered; a description of each exhibit sufficient for identification; whether the parties have stipulated to admissibility, and, if not, the legal grounds for objections to admissibility. Exhibits must be numbered serially, as court exhibits, beginning with the number "1" (one); a block of exhibit numbers may be allocated to each party. If discovery, such as depositions, requests for admissions, interrogatory responses or any other form of discovery responses, is to be used in lieu of live testimony at trial, such discovery must be set forth in the exhibit index together with the legal grounds for objections to admissibility. Counsel must also comply with the provisions of Code of Civil Procedure section 2025, subdivisions (1) and (u) with respect to the anticipated use of videotaped depositions. Counsel must prepare and exchange a written transcript of any other audio and/or video presentations intended to be used at trial in accordance with the California Rules of Court, rule 2.1040. FAILURE TO COMPLY WITH THESE REQUIREMENTS MAY RESULT IN AN ORDER EXCLUDING DOCUMENT(S) AND/OR EXHIBITS AT TRIAL.

G. Stipulations Regarding Admission of Evidence and Summaries of the testimony.

H. All Points and Authorities (legal arguments) on which counsel intends to rely.

I. A statement of the specific relief requested. The relief may be requested in the alternative.

J. The Joint Trial statement must be signed by all counsel (and litigants appearing in propria persona) who will appear and participate in the trial.

(Adopted 1/1/1993; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.22.9

Trial Readiness Conference; Sanctions

The Joint Trial Statement must be presented to the court at the Trial Readiness Conference.

A. Separate reports will not be accepted. The completed report must be presented to the judge at the scheduled conference. The function of the joint disposition conference is to assure that the matter is ready for trial.

B. Counsel completely familiar with the case and possessing authority to enter into stipulations must be present at the scheduled hearing; however, clients need not appear unless specifically ordered by the court. Orders made will be binding on trial counsel and will not be subject to reconsideration due to counsel's unfamiliarity with the case at the time of the joint disposition conference.

C. If the court determines that a party, or counsel, has failed to reasonably comply with these rules, including the diligent preparation of a Joint Trial Statement, the court may impose appropriate sanctions against that party or counsel including a summary determination of any contested issues in accordance with the other party's papers filed in compliance with these rules, the levy of sanctions pursuant to Code of Civil Procedure section 575.2, the issuance of citations or bench warrants, or any other appropriate action.

(Adopted 1/1/1993; Rev. 7/1/1995, 7/1/1996; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.22.10

Settlement Conference

Upon filing a written stipulation that the probate judge may act as both settlement judge and trial judge if the matter is not settled, which is signed by all parties and their attorneys of record the probate judge in the central division will preside at settlement conferences unless any party requests that another judge be designated or the probate judge determines it would be inappropriate under the circumstances. If another judge is to be designated, an effort will be made to select a former probate judge or a judge with extensive probate experience. Counsel may also, by unanimous approval, accept as settlement judge one or more temporary judges designated by the probate judge. If all parties, after the case management conference, agree upon a settlement conference to assist in resolving the matter, a settlement conference may be set ex parte.

Except in special circumstances, the probate judge in the North County Division will not hear settlement conferences. Where a judicial settlement conference has been agreed to or ordered by the probate judge, the probate department will assist the parties in arranging for a judge to preside over the settlement discussions.
(Adopted 1/1/1993; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.22.11

Trial Briefs and Motions in Limine

A. All motions in limine (as authorized by law) and trial briefs must be filed with the clerk of the trial court and faxed (in accordance with the Cal. Rules of Court, rule 2.306) or personally served on opposing counsel no later than 4:30 p.m. five court days prior to the date set for trial. Opposition pleadings to in limine motions must be filed and faxed (in accordance with the Cal. Rules of Court, rule 2.306) or personally served on opposing counsel no later than 12 noon of the day prior to the date set for trial.

B. Prior to the time the matter is called for trial, the parties must provide the clerk of the trial court with a final joint exhibit list, which must include appropriate summaries, as set forth hereafter. The parties must also provide two joint exhibit binders, one for the court and one for the witnesses, containing a complete set of all exhibits. The exhibits must be marked to correspond to the joint exhibit list. Copies of exhibits to be offered by the petitioner must not be duplicated by the respondent.

C. If ordered by the court at the Case Management Conference, each party seeking a surcharge or to justify items of an account to which objections have been made in the Joint Trial Report must prepare a summary of the documentary evidence supporting the request for surcharge or the accounting of contested items (e.g., canceled checks, receipts, bills, etc.). This summary must be included in the final joint exhibit list and exhibit binders.
(Adopted 1/1/1993, Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.22.12

Reserved for Future Use

Rule 4.22.13

Statements and Documents not Admissible Evidence

All responsive pleadings and all other documents filed with the court concerning mediation under these rules, and all matters disclosed verbally concerning any such mediation, are not admissible evidence in any later contested proceeding between the parties solely by reason of their disclosure under these rules. Evidence Code section 1119 governs statements and documents disclosed in mediation.

This rule also applies to proceedings conducted before two-attorney settlement panels in North County.
(Adopted 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.22.14

Alternative Dispute Resolution in Contested Probate Matters.

A. Statement of Purpose. Contested estate, trust, conservatorship, guardianships and other matters covered by the Probate Code are uniquely appropriate for Alternative Dispute Resolution in the interests of prompt, efficient and economical dispute resolution. Mediation is the preferred method of alternative dispute resolution in contested matters. The court therefore encourages parties to mediate their dispute and may order parties to mediation if appropriate.

B. ADR Defined. Generally, Alternative Dispute Resolution ("ADR") is a term covering the full range of techniques designed to resolve disputes short of trial in the courts, including, but not limited to, mediation, binding arbitration, a judicially supervised settlement conference, a two-attorney settlement panel in North County, and neutral evaluation.

These rules apply to all methods of ADR except references and trials by reference pursuant to California Code of Civil Procedure sections 638-645.2.

C. Court Ordered Alternative Dispute Resolution Absent Objection. At the first practical opportunity in a contested matter, the court will order the matter to mediation unless a party objects. Additionally, the court may order the parties to an appropriate method of ADR at any time in an attempt to resolve the matter.

D. Court Determination Re ADR Upon Objection. At the time of the ADR assignment, a party may orally or in writing object to the need for ADR, the method of ADR selected, the selection of the neutral person or neutral panel, the method of payment of the costs of ADR, and/or the timing of ADR. The court has the discretion to make appropriate orders, which may include ordering the parties to meet and confer, ordering an appropriate method of ADR, proceeding pursuant to Local Rule 4.22.1 et seq., or deferring ADR until discovery has been completed. If the court orders ADR, it may restrict discovery until the completion of ADR, but if all ADR efforts are ultimately unsuccessful, discovery will proceed in accordance with the Civil Discovery Act. The order for ADR may be made by a minute order or by a formal order at the request of any party.

E. Continuance Pending Completion of ADR. Upon ordering ADR, the court may continue the proceeding to a date when ADR will be completed, or may set the matter for hearing or trial, as provided in Local Rule 4.22.5. If initial ADR is unsuccessful, the court may either continue the matter for further ADR efforts or, if the court concludes further efforts at ADR are not warranted, set the matter for such further proceedings the court deems appropriate.
(Adopted 1/1/2004; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.22.15

Parties Select ADR Facilitator

Upon ordering the parties to ADR, the parties and their counsel must jointly select a qualified mediator or ADR facilitator to conduct the ADR. If the parties are unable to select the method of ADR or the neutral ADR facilitator, the court, sua sponte or upon request, will provide guidance to the parties, including advising the parties of ADR programs commonly used in the area. If the parties ultimately cannot agree, the court will make appropriate orders.
(Adopted 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2004; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.22.16

Costs and Fees

It is presumed that the parties will share equally in the costs of ADR. However, absent the agreement of all interested parties with regard to allocation of costs and fees, the court may, in its discretion, allocate the costs and fees of ADR to one or more of the interested parties to the contested matter, charge such costs and fees to the fiduciary (i.e., the executor, conservator, trustee or guardian of the estate) and/or order the fiduciary to advance such costs and fees. Further, if the court determines that any party acted in bad faith or unreasonably in the ADR process, the court may charge ADR costs and fees to such party. In circumstances where the court finds that continued litigation and the expenditure of funds in support thereof is not in the best interests of the estate or trust, the court may order that the costs and fees of mediation be advanced by the trust or estate, subject to later allocation. For purposes of this rule, the term "costs and fees of ADR" include only those costs and fees directly relating to the ADR service and do not include the attorneys' fees or other costs of the parties.
(Adopted 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2004; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.22.17

ADR Statement Re: Impartiality

Every person who conducts ADR pursuant to these rules must, as soon as practicable, disclose to all parties any facts that might reasonably cause any party to entertain a doubt as to the impartiality of such ADR facilitator. ADR facilitators will comply with all applicable disclosure standards, including, but not limited to, those found in California Rules of Court, rule 3.816.
(Adopted 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2004; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

CHAPTER 23
LAW AND MOTION AND DISCOVERY MATTERS

Rule 4.23.1

Preliminary Definitions

An application for relief based upon the Probate Code must be brought as a petition. An application for relief based upon the Code of Civil Procedure must be brought as a motion.
(Adopted 1/1/2006)

Rule 4.23.2

Applicability of Division Two in Probate Proceedings

A. Except to the extent the Probate Code provides otherwise, counsel and parties appearing in propria persona must comply with the pertinent sections (as amended from time to time) of Division II of these Rules and the California Rules of Court beginning at rule 3.1100 et seq., with respect to demurrers, motions to strike, requests to take judicial notice, motions for summary judgment, and all other pretrial motions. Counsel and parties appearing in propria persona must also consult Department Rules of the various Probate Departments for further requirements.

B. The form and format of discovery proceedings in probate are governed by the California Rules of Court, rule 3.1000 et seq., which will be enforced in all probate proceedings.
(Adopted 1/1/2006; Rev. & Renum. 1/1/2009)

Rule 4.23.3

Filing Motion Papers

A. Unless a specific greater or lesser time is authorized by statute, court rule, or order, moving papers must be filed directly with Probate Services at least 16 court days prior to the scheduled hearing. This rule may be waived by an order shortening time upon ex parte application.

B. Unless otherwise ordered by the court, motions must be presented to Probate Services prior to the issuance of a hearing date.

C. The phrase "LAW & MOTION" must appear at the beginning of the title of all papers submitted to the court in support of the motion.

(Adopted 1/1/2006; Rev. & Renum. 1/1/2009)

Rule 4.23.4

Hearings

Unless otherwise authorized by the court, all Probate Law and Motion and Discovery will be set for hearing as posted on the court's website, www.sdcourt.ca.gov. Once set, the matter may be continued only with a written order of approval from the court. A matter "continued" by stipulation without court approval will be taken off calendar.

(Adopted 1/1/2006; Rev. 1/1/2009)

Rule 4.23.5

Filing and Serving Opposition or Support Papers on Motion

A. Opposition, joinder and reply papers must be filed in Probate Services. The deadlines provided by law for serving and filing opposition and reply papers, as provided in Code of Civil Procedure section 1005, subdivision(b), will be enforced for all matters. In this regard, the court is not obligated to, and may not without good cause shown, consider any late-filed or surreply papers in a matter.

B. The phrase "LAW & MOTION" must appear at the beginning of the title of all papers submitted to the Court in opposition, joinder and reply to a pending motion.

(Adopted 1/1/2006; Rev. & Renum. 1/1/2009)

Rule 4.23.6

Filing Within 3 Days of Hearing

When papers are filed within three calendar days of the hearing, service on opposing counsel must be by personal delivery (or by fax when permitted by Cal. Rules of Court, rule 2.306).

(Adopted 1/1/2006)

Rule 4.23.7

Filing of Proof of Service

Proof of service of the moving papers must be filed no later than five calendar days before the time set for hearing.

(Adopted 1/1/2006)

Rule 4.23.8

Tentative Rulings

At the option of the Judicial Officer sitting in Probate, tentative law and motion rulings will be made available in accordance with rule 2.1.19. For all Probate departments, tentative rulings will be made available by telephone at 619-450-7381 and on the court's website at www.sandiego.courts.ca.gov (click on "tentative rulings" from the probate webpage) by 3:00 p.m. on the day before hearing.

(Rev. & Renum. 1/1/2006; Renum. 1/1/2007; Rev. 1/1/2009)

APPENDIX I

(Del. 1/1/2009)

DIVISION V
FAMILY LAW

CHAPTER 1
GENERAL

Rule 5.1.1

Applicability of Rules

These rules are intended to provide uniformity of practice and procedure in all departments of the San Diego Superior Court hearing and deciding Family Law matters. Variations between divisions must be approved by the Supervising Judge of the Family Courts and must not constitute a significant deviation from these rules. All litigants and attorneys must comply with these rules in addition to all applicable statutes and California Rules of Court. Litigants representing themselves without an attorney and all attorneys will be held to the same standards of practice and procedure. The court is not permitted to provide legal assistance to unrepresented litigants. All references to "counsel" and/or "attorney" in these rules apply to any unrepresented litigant.

Sanctions. For any noncompliance with these rules or any order of the Court, the Court may set an order to show cause why sanctions should not be imposed pursuant to Code of Civil Procedure section 575.2.

(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 5.1.2

The Family Law Courts

The street addresses and telephone numbers for each of the Family Law courts are listed on the court's web site at: www.sdcourt.ca.gov/portal/page?_pageid=55,1060004&_dad=portal&_schema=PORTAL.

Each of the Family Law courts ("Central" in San Diego, "South County" in Chula Vista, "East County" in El Cajon, and "North County" in Vista) is a separate division and a separate venue. A listing of filing districts by zip code is available at: www.sdcourt.ca.gov/pls/portal/docs/page/sdcourt/familyandchildren/wheretofilefl.htm.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.1.3

Work of the Family Law Courts

The Family Law Divisions of the San Diego Superior Court hear all motions and trials in Family Law matters including, but not limited to, all proceedings under the Family Code; the Hague Convention on Preventing International Abduction of Children; *Marvin* actions; and all related discovery motions.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.1.4

Words and Phrases Defined

Unless the context otherwise requires, these definitions govern the construction of these rules.

"**Attorney**" and "**Counsel**" are used interchangeably and synonymously in these rules.

"Child" includes the plural **"children"** where the context requires.

"Declaration of Disclosure" as defined by Family Code sections 2103, 2104 and 2105.

"Shall" and **"must"** are mandatory; **"will"** and **"may"** are permissive.

"Self-Represented Litigant," "Pro Per," "Pro Se" and **"In Propria Persona"** mean any litigant or party who is representing himself or herself in a Family Law matter without an attorney of record.

"Writing" is as set forth in Evidence Code section 250.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.1.5

Applicable Abbreviations

The following abbreviations are used throughout these rules:

ADR	=	Alternative Dispute Resolution
CLETS	=	California Law Enforcement Telecommunications System
CMC	=	Case Management Conference
DCSS	=	Department of Child Support Services, County of San Diego
DVPO	=	Domestic Violence Protective Order
EPO	=	Emergency Protective Order
FCS	=	Family Court Services
FSD	=	Family Support Division
MSC	=	Mandatory Settlement Conference
OSC	=	Order to Show Cause
SC	=	Short Cause Trial
STC	=	Status Conference
TRO	=	Temporary Restraining Order
UCCJEA	=	Uniform Child Custody Jurisdiction and Enforcement Act

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.1.6
Reserved for Future Use
(Del. 1/1/2008)

CHAPTER 2
CASEFLOW MANAGEMENT

Rule 5.2.1
Direct Calendar Case Assignment
New cases are assigned randomly to a judicial officer for all purposes. All appearances in the case must be made before the assigned judicial officer unless otherwise ordered. The Petitioner/Plaintiff will receive a notice of case assignment when the petition/complaint is filed. The Petitioner/Plaintiff must serve the Respondent/Defendant with a copy of the notice of case assignment with the petition/complaint.

The time limits for filing a peremptory challenge are set forth in California Code of Civil Procedure section 170.6 and California Government Code section 68616, subdivision (i).
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.2.2
Alternative Dispute Resolution
The Family Code and the California Rules of Court encourage Alternative Dispute Resolution of Family Law Matters. The Family Law Court promotes and encourages the use of mediation, arbitration, Collaborative Family Law, a private judge (Temporary Judge) and, when appropriate, judicial case management as methods of Alternative Dispute Resolution in Family Law cases.

A. Mediation or Arbitration. Except in cases of domestic violence, attorneys are encouraged to provide their clients with (Form D-9) Alternative Dispute Resolution Informational Notice available at Family Law Business Offices or online at www.sdcourt.ca.gov, and to advise their clients of the availability of mediation and arbitration. Parties wishing to participate in mediation or arbitration must advise the court as soon as possible by submitting a written stipulation signed by both parties and their attorneys if the parties are represented. Where known, the name of the Mediator or Arbitrator selected by the parties must be included in the written stipulation.

B. Collaborative Family Law

1. A case will be designated a "Collaborative Family Law Case" if the parties have signed and filed with the court a written Collaborative Family Law stipulation which provides that:

a. The parties will engage in the full and candid informal exchange of all relevant information and documentation;

b. The collaborative attorneys are disqualified from continuing to represent the parties if the Collaborative Family Law process is terminated by either party;

c. The parties will jointly retain any experts needed to assist them in reaching a collaborative settlement;

d. All documents filed in the case will be submitted by the parties in propria persona;

e. No contested matters will be presented for determination by the court either by Motion or Order to Show Cause while the case is proceeding as a Collaborative Family Law Case; and

f. The words **"Collaborative Family Law Case"** will be included in the caption of every document filed with the court.

2. The essence of the Collaborative Family Law process is a series of intense settlement negotiations. Therefore, pursuant to the written Collaborative Family Law stipulation of the parties:

a. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the Collaborative Family Law process will be admissible as evidence or subject to discovery, and disclosure of such will not be compelled in any non-criminal proceeding;

b. No writing that is prepared for the purpose of, in the course of, or pursuant to a Collaborative Family Law Case will be admissible or subject to discovery, and disclosure of the writing will not be compelled in any non-criminal proceeding; and

c. All communications, negotiations, and/or settlement discussions by and between the participants in a Collaborative Family Law Case will remain confidential.

3. In any Collaborative Family Law case, pursuant to the written Collaborative Family Law stipulation of the parties, the Court will:

a. Consider collaborative counsel to be advisory counsel and not attorneys "of record;"

b. Refuse to schedule any contested hearings, impose discovery deadlines, or enter any scheduling orders; and

c. Provide notice and an opportunity to be heard prior to any dismissal based on a failure to prosecute or delay.

4. The designation of a case as a Collaborative Family Law Case is completely voluntary and requires the agreement of all parties. The Collaborative Family Law Case designation will be removed by the court

upon the written stipulation of the parties or upon the filing and service of a Termination Election indicating a party's desire to terminate the Collaborative Family Law process. Upon the filing of a Termination Election, the clerk shall schedule a Status Conference and notify the parties thereof.

C. Use of a Privately Compensated Temporary Judge (Temporary Judge). With the court's authorization, the parties may agree to use a Privately Compensated Temporary Judge ("Temporary Judge") to adjudicate their case. (Cal. Rules of Court, rules 2.830-2.834.)

1. Submission of Stipulation. Parties must submit the stipulation, "Notice of Posting", and proposed order for appointment of a Temporary Judge to the courtroom of the Supervising Family Judge (located in the Central Division). (See Stipulation and Order for Appointment of Privately Compensated Temporary Judge (form SDSC D-008) and Notice of Posting (form SDSC D-010) located at www.sdcourt.ca.gov.)

2. Representations by the Stipulating Parties. By submitting the stipulation and proposed order to the court, the stipulating parties and their attorneys represent that they are the only parties in the case and that no new parties will be added.

3. Application of Settlement Conference Rules to Proceedings before Temporary Judges. Notwithstanding rule 5.2.6(c), the case will be exempt from the Settlement Conference requirements upon the signing of the proposed order by the Supervising Family Judge. Until the order is signed, the case remains subject to the Settlement Conference rules, to all other applicable rules of this court, and all previously ordered deadlines, hearings, and other orders will remain in full force and effect.

4. Case Management Conference (CMC) and Status Reports. The Supervising Family Judge will set a CMC every six months at the time the stipulation and order is signed to be heard in the department of the Supervising Family Judge. Each month, the Temporary Judge must submit a report to the Supervising Family Judge giving the status of all matters under submission including a description of the matters taken under submission and the length of time under submission. (Judicial Administration Rule 10.603(c)(3).)

5. Use of Court Facilities, Court Personnel and Summoned Jurors

a. The use of court facilities, court personnel and summoned jurors for matters pending before a Temporary Judge are governed by rule 2.833 of the California Rules of Court.

b. Pursuant to California Rules of Court, rule 2.833(b), the testimony of a Family Court Services Counselor is subject to the approval of the Presiding Judge. The subpoenaing party must comply with Local Rule 5.2.8 and, in order to minimize disruption to court operations, set a date and time certain for the testimony.

6. Exhibits. All exhibits must be available for public inspection as they would be if the case were being tried by the court. Upon final determination of the case by the Temporary Judge, parties may stipulate to the return of the exhibits.

7. Filing of Original Papers and Orders of Temporary Judge

a. All original papers must be filed with the clerk prior to submission of a filed stamped conformed copy to the Temporary Judge.

b. Minute orders will not be accepted unless they are signed by the Temporary Judge. If the minute order format is used, the order must set forth the name, address, telephone number, and CSR number of any privately retained court reporter. If electronic reporting is used, the minute order must reflect this.

8. Notice of Pending Matter. Parties must file one original and one copy of the notice required by California Rules of Court, rule 2.833(a). (Notice of Posting [form SDSC D-010] available at www.sdcourt.ca.gov.) The Clerk of the Court will post the notice in the lobby of the Family Court location where the case was initiated.

9. Interested Persons Wishing to Attend a Hearing before a Temporary Judge. Interested persons wishing to attend a hearing or hearings on a matter heard by a Temporary Judge must serve a "request for special notice" with the parties to the action. A copy of the "request for special notice" along with a proof of service must be filed with the court. The interested persons must thereafter be given notice of all hearings in the matter pending before the Temporary Judge.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.2.3

Filing Locations

Family Law cases must be filed in the division in which the Petitioner and/or the Respondent reside, or, in paternity cases, where the child resides. A listing of filing districts by zip code is available at: www.sdcourt.ca.gov/pls/portal/docs/PAGE/SDCOURT/FAMILYANDCHILDREN/WHERETOFILEFL.HTM. Original petitions must bear the proper filing location and be filed in the appropriate division.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.2.4

***Marvin* Actions**

Any family law related action not specifically authorized by the Family Code (e.g., *Marvin* complaints) initially must be filed as a separate proceeding in the Family Law Division. Upon the Court's own motion or if a timely request for a jury trial is made and granted, the assigned judicial officer will consult with the supervising judge to determine whether the matter will remain in the Family Law Division for trial. On the court's own motion

or upon noticed motion, the action may be coordinated with a pending Family Law case pursuant to California Rules of Court, rule 3.350. (See also Local Rule 5.2.5.)
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.2.5

Consolidated Cases

If the court consolidates a case, the case of broader jurisdiction or the lower case number if the cases are of equal jurisdiction will be designated as the lead case. The originals of all papers thereafter filed will be placed in the lead case file. (Cal. Rules of Court, rule 3.350.) Any hearing date in any case other than the lead case will be vacated or reset, and all future hearing dates will be noticed under the lead case number.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.2.6

Status Conference (STC)

In those cases where both Petitioner and Respondent are self-represented, the court will calendar a STC for the earlier of 150 days after the filing of the petition or 90 days after the filing of the response, unless the parties have requested an earlier date or the parties have filed an ADR or Reconciliation stipulation pursuant to sections C and D below or a judgment has been entered or a dismissal has been filed.

A. Unrepresented parties are required to meet with a staff attorney from the Family Law Facilitator's Office to discuss the status of their case and receive necessary assistance.

B. Scheduling and Notice. The court will provide notice of the STC to parties who have filed an appearance in the case. Each party may request one continuance by telephone up to one day before the scheduled conference date for a reasonable period of time. The continuance must be by stipulation if Respondent has appeared. Additional continuances may be requested ex parte with a declaration showing good cause. It is the obligation of all self-represented parties to keep the court apprised of their current mailing address. If a party changes his or her residence without promptly filing a Notice of Change of Address (available free of charge in the Business Office of the court), the notice of the STC provided to the party may be returned by the Postal Service as undeliverable. If this results in a failure to appear at the STC, the court will likely determine that the case has been abandoned and will dismiss it without prejudice as a sanction for non-compliance under Code of Civil Procedure section 575.2 without further notice.

C. Alternative Dispute Resolution (ADR). Parties who file a stipulation indicating they are participating in ADR will be exempt from the STC for a period of 12 months. If a judgment or dismissal is not filed within 12 months of the filing of the petition, the court will proceed with a STC.

D. Reconciliation. Parties who file a stipulation indicating they are attempting reconciliation will be exempt from the STC for a period of 12 months, however, if a judgment or dismissal is not filed within 12 months of the filing of the petition, the court will proceed with a STC.

E. Attendance. All parties to whom notice of the STC has been sent by the court must attend the STC. If a party fails to attend an initial STC, and the notice sent by the court has not been returned by the Postal Service as undeliverable, the court will re-notice a second and final STC within 90 days. If the noticed litigant(s) fail to attend the second STC, the court will likely determine that the case has been abandoned and will dismiss it without prejudice as a sanction for non-compliance under Code of Civil Procedure section 575.2 without further notice.

F. Reinstatement of Dismissed Cases. A party to a case dismissed pursuant to this Local Rule for failure to attend a STC may apply within 6 months of the dismissal to have the case reinstated under Code of Civil Procedure section 473, subdivision (b). Upon a showing of good cause, the court may reinstate the case upon such terms and conditions as the court deems just.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.2.7

Case Management Conference (CMC)

In those cases where one or both of the parties is represented by counsel, the court will calendar a CMC for the earlier of 150 days after the filing of the petition or 90 days after the filing of the response, unless the parties have requested an earlier date or the parties have filed an ADR or Reconciliation stipulation pursuant to sections C and D below.

A. Purpose. The purpose of the CMC is to discuss the timetable for the resolution of the case and for the court to make all appropriate orders.

B. Scheduling and Notice. The court will provide notice of the CMC to all parties who have entered an appearance in the case. Each party may request one continuance for a reasonable period of time by telephone up to one day before the scheduled conference date. The continuance must be by stipulation if Respondent has appeared.

C. Alternative Dispute Resolution (ADR). Parties who file a stipulation that they are participating in ADR will be exempt from the CMC for a period of up to 12 months. If a judgment or dismissal is not filed within 12 months of the filing of the petition, the court will proceed with a CMC.

D. Reconciliation. Parties who file a stipulation that they are attempting reconciliation will be exempt from the CMC for a period of up to 12 months. If a judgment or dismissal is not filed within 12 months of the filing of the petition, the court will proceed with a CMC.

E. Attendance. All Parties who have been noticed must be present at the CMC unless represented by counsel, in which case, counsel must appear in person or by telephone. The parties or counsel must be prepared to discuss the timetable for resolution of the case and be sufficiently familiar with the facts so that the court may make all appropriate orders. Counsel making a special appearance for counsel of record must have actual knowledge of the facts and procedural history of the case.

F. Orders. The court may make any of the following orders:

1. Set a date for the exchange of Final Declarations of Disclosure and the filing of proofs of service, consistent with the applicable provisions of the Family Code and the Code of Civil Procedure.

2. Establish a plan for the completion of discovery, consistent with the applicable provisions of the Family Code and the Code of Civil Procedure.

3. Set a date for the preliminary exchange of expert witness information, consistent with the applicable provisions of the Family Code and the Code of Civil Procedure.

4. Set an FCS date in cases where custody/visitation is at issue, and no evaluation or private mediation is pending or completed.

5. Address the selection of joint experts.

6. Address the appointment of a Special Master pursuant to the Code of Civil Procedure and the California Rules of Court.

7. Address any issues to be bifurcated.

8. Set a date for the exchange and filing with the court of the Family Law CMC Form which includes a list of settled issues and a list of issues to be litigated. (See www.sdcourt.ca.gov for the most recent version of this form under "Family Law" forms.)

9. Set an MSC.

10. Any other orders the court deems appropriate for the expeditious resolution of the case, including the setting of another CMC.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.2.8

Mandatory Settlement Conference (MSC)

A. Calendaring. The court will set a Mandatory Settlement Conference in all Family Law cases unless specifically exempted. The MSC will be set at the CMC. Absent a court order allowing a party to appear by telephone, both parties and their counsel of record must personally attend the MSC. Counsel and all parties must be present for the calendar call. Due to the time settlement judges spend reading the briefs and preparing for the MSC, there will be NO continuances granted on the day of the MSC.

B. Settlement Conference Panel. The court will appoint a family law attorney pursuant to the qualifications set forth in California Rules of Court, rule 2.812, as a temporary judge to each case to assist the parties and trial counsel in reaching a settlement at the MSC. If available, two temporary judges will be assigned to more complex cases. The Supervising Judge and any judges not otherwise engaged may be available for additional assistance.

C. Meet and Confer Requirement. Counsel must meet and confer either in person or by telephone at least five court days before the MSC to resolve as many issues as possible and to identify those issues which remain unresolved. The results of this conference must be included in the settlement brief.

D. Settlement Briefs. Each party must prepare a settlement brief. Documents to be submitted to the settlement judge(s) with the settlement briefs include a current Final Declaration of Disclosure and, if support or fees are at issue, a current Income and Expense Declaration. Each party must provide a copy of each of these documents to opposing counsel and the settlement judges no later than 4:00 p.m. three court days preceding the MSC. The settlement briefs must be in the same format as the Mandatory Trial Statement (See form at www.sdcourt.ca.gov for the most recent version of this form under "Family Law" forms.) Failure to prepare and serve a Settlement Brief in accordance with these rules may subject a party or counsel to a sanction. Each party must state with specificity that party's proposal for the resolution of each contested issue and the reasons therefor.

E. Division of Furniture, Furnishings, and Personal Effects. If the parties have been unable to divide their furniture, furnishings, and personal effects by agreement, the parties must jointly prepare and submit a combined list of these items. The list must include a description of each item, and opposite that item each party's position concerning the value, character (separate or community), and the proposed disposition of the asset.

F. *Epstein* Credit Claims. If a party is claiming reimbursement for payment of community debts from separate funds following separation, that party must attach to the settlement brief all exhibits to be introduced into evidence on this issue at trial. This rule is not intended to preclude testimony explaining attached documentation or testimony when no documentation is available.

G. Family Code Section 2640 Reimbursement Claims. A party claiming reimbursement pursuant to Family Code section 2640 must attach to the settlement brief any exhibits which that party intends to introduce at the time of trial to substantiate the claim(s). This includes canceled checks, bank statements, title documents, escrow documents, etc. This rule is not intended to preclude testimony explaining attached documentation or testimony when no documentation is available.

H. Reference to Special Master. Failure to meet the requirements set forth in sections E, F, and above may result in those issues being referred to a Special Master pursuant to Code of Civil Procedure section 639. Any

costs relating to proceedings before the Special Master will be borne by one or both of the parties as ordered by the court.

I. Valuation of Vehicles. Current *Kelley Blue Book* values, whether obtained from the current printed book or from the *Kelley Blue Book* on-line service (www.kbb.com), for all vehicles will be accepted into evidence without further foundation. There will be a rebuttable presumption that the value of the vehicle in question is midway between the "wholesale" and "retail" values, or the on-line "trade-in" and "retail" values, with appropriate adjustments for extras and mileage. Copies of the relevant *Kelley Blue Book* information for all vehicles whose value is in issue must be attached to both parties' settlement briefs.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.2.9

Telephonic Appearances in Family Court

A. Appearance by Telephone.

1. An attorney of record may appear by telephone in CMCs and Joint Requests for Continuances.

2. A self-represented party may appear by telephone in a Joint Request for Continuance.

3. Appearances by telephone at any other hearing may only be made with the prior permission of the court, for good cause shown. The court may permit an appearance by telephone at any time under such conditions and circumstances as the court deems appropriate. A request to make an appearance by telephone must be communicated to the department's calendar clerk and to all other self-represented parties or attorneys of record not less than two court days before the hearing.

B. Personal Appearance Otherwise Required. A personal appearance is required for all other hearings and proceedings.

C. Reporting. All hearings and proceedings involving an appearance by telephone shall be reported to the same extent and in the same manner as if the participants had appeared in person. If more than one self-represented party or attorney of record is appearing telephonically in a given hearing or proceeding, each speaker shall identify himself or herself as often as necessary to maintain a good record of the hearing or proceeding.

D. Costs. Costs, if any, incurred in connection with a telephonic appearance shall be borne by the party or attorney making the appearance or equally by both/all sides where all parties in the action are appearing telephonically. However, a party who has obtained a fee waiver prior to a telephonic appearance shall not be required to pay costs, if any, incurred in connection with the telephonic appearance.

E. Advisement Regarding Appearance by Telephone. Any self- represented party or attorney of record who elects to make an appearance by telephone under this rule is hereby advised that:

1. A self-represented party or attorney of record has a right to appear personally at the hearing or proceeding, and by giving notice of an intention to appear by telephone waives that right.

2. A self-represented party or attorney of record appearing by telephone shall be prepared to provide information (e.g., driver's license number, Social Security number, State Bar number, etc.) sufficient to establish the identity of the self-represented party or attorney to the satisfaction of the court.

3. A self-represented party or attorney of record appearing by telephone will be unable to assess visually the demeanor of witnesses or other participants at the hearing and may be unable to examine visually documents and evidence presented at hearing. By electing to appear telephonically, the self-represented party or attorney of record acknowledges and agrees to these limitations.
(Adopted 1/1/2007; Rev. 1/1/2008)

CHAPTER 3
EX PARTE MATTERS

The primary purpose of ex parte hearings is to address emergency and procedural matters that cannot be heard on the court's regular motion calendar.

Rule 5.3.1

Time for Ex Parte Matters

Notice of ex parte hours will be posted in each of the Divisions of the court. Refer to the court's website for current ex parte information at www.sdcourt.ca.gov.

A judicial officer of any Division of the Family Court may hear an emergency ex parte request at any time that the business of the court permits during its normal business hours.

Ex parte requests will generally be heard and determined in open court and on the record except when, in the discretion of the judicial officer, such hearing would more properly be held in chambers and off the record.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008)

Rule 5.3.2

Required Notice to Opposing Counsel/Party

Except as provided in Family Code section 6300, counsel or a party requesting an ex parte hearing must notify the opposing counsel or party, including the Department of Child Support Services if appropriate, of the ex parte relief requested by no later than 10:00 a.m. on the previous court day.

"Notice" of an ex parte appearance given by message left on a voice mail machine DOES constitute notice under these rules. "Notice" of an ex parte appearance given by facsimile ("fax") machine DOES NOT constitute notice under these rules unless this method of notice has been previously agreed upon by and between counsel or the unrepresented litigants.

The requesting counsel or party must provide a Declaration of Notice to the Court at the time of the ex parte appearance. The Declaration of Notice must include, under penalty of perjury, the details of how and to whom notice of the date, time, and place of the ex parte hearing and a description of the relief to be requested was given, or a complete description of the good faith effort to provide such notice.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.3

Exceptions to the Notice Requirement

Except as provided in Family Code section 6300, if the moving party asserts notification may negate the benefit of the requested relief, or explains why notice could not be given, ex parte relief may be granted without the required notice. The Declaration of Notice must set forth the facts upon which such claim is based. The parties may stipulate that notice is unnecessary.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.4

Case Number Required for an Ex Parte Appearance

The party making an ex parte appearance must obtain a case number before the court will consider the application for an emergency order, including a request for a temporary restraining order, provisional remedy, or any other emergency relief.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.5

Requesting the Court File Before an Ex Parte Appearance

When ex parte notice is given in the Central and North County Divisions, counsel must request that the court file be made available to the judicial officer assigned to hear the ex parte matter. No advance notice to the court to pull a file is required in the South and East County Divisions. The telephone numbers for requesting the case file are available on the court's website at www.sdcourt.ca.gov.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.3.6

Order of Hearing Ex Parte Matters

Judicial officers will hear ex parte matters in an order which will facilitate the matter for the court and counsel and so as not to significantly interfere with the court's normal calendar. Any opposed ex parte request which cannot be heard prior to the court's normal calendar may be added to the calendar and heard in due course.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.7

Meet and Confer

If an ex parte request is contested, both sides must meet and confer on the issue(s) in dispute. The meet and confer conference must occur in a way that will ensure that all issues and positions of the parties have been discussed before appearing before the court. Failure to comply with this rule may result in sanctions, including denial of the ex parte request.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.8

Ex Parte Application Form, Supporting Declarations, and Proposed Order

The requesting party must completely fill out the pre-printed NCR ex parte application form (SDSC D-046). If the opposing party or counsel is present, the requesting party must personally serve the opposing party or counsel with the ex parte application form, all supporting declarations, and the proposed order. The completed form, all declarations, and the proposed order must be presented to the judicial officer or the bailiff of the court prior to the ex parte hearing.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008)

Rule 5.3.9

Evidentiary Declarations

The judicial officer will only consider ex parte requests that are supported by written evidentiary declarations that have been signed by the declarant under penalty of perjury. The supporting declaration(s) must describe why the ex parte request cannot be heard on the court's regular motion calendar. The supporting declaration(s) must be filed with the court and made a part of the court's file. Supporting declarations are not required for case management issues if jointly requested by the parties and/or counsel.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.10

Exceptions to Notice, Application and Evidentiary Requirements

A. Requests for the following types of ex parte relief do not require notice to opposing counsel, an Ex Parte Application, or supporting declarations:

1. Signature of an order or judgment which opposing counsel has approved or agreed not to oppose;

2. Signature of an order or judgment after a default proceeding;

3. Wage and earning assignment order (see Local Rule 5.3.13);

4. Restoration of former name after judgment; and

5. Order for publication or posting.

B. The business office at each division has a drop box where these ex parte requests may be deposited for processing. An attorney service slip or stamped self-addressed envelope should be included if conformed copies are requested.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.11

Service of Documents

If the opposing party or attorney appears at the ex parte hearing, the party seeking relief must provide copies of the motion and supporting documents at the earliest possible time. The court will not proceed with the ex parte hearing until the opposing counsel/party has had the opportunity to review the motion and documents. If no one appears to oppose the ex parte relief, the requesting party shall serve counsel or the other party with conformed copies of the ex parte application form, all supporting declarations, and the proposed final order (if one is signed), by mail within 24 hours of the ex parte hearing.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.12

Ex Parte Motions Re Order Shortening Time for Hearing Taking of Deposition

When requesting an order shortening time for hearing and/or taking deposition, the supporting evidentiary declaration(s) must set forth the necessity for the order shortening time. For good cause shown, time for service may be shortened up to two court days before the hearing date and up to five calendar days before the taking of a deposition.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.13

Earnings Assignment Orders for Arrearages

Earnings assignment orders for arrearages accrued under any support order may be requested ex parte by completing a declaration, signed under penalty of perjury, setting forth the month to month accrual of amounts paid and amounts unpaid, and the total amount of arrearages (principal and interest) requested. Notice to the opposing counsel or party is not required. The court generally will grant ex parte earnings assignment orders for arrearages. Nevertheless, such orders are without prejudice to subsequent attack by a motion to quash.

Attorney fees will not be granted in connection with ex parte earnings assignment orders for arrearages. Fees incurred to obtain an earnings assignment order for arrearages may be requested by a noticed motion set on a regular motion calendar.

(Adopted 1/1/2008)

Rule 5.3.14

Ex Parte Motions Re Custody and Visitation

Pursuant to Family Code section 3061, an order regarding custody stipulated to by counsel may be signed by a judicial officer only when a copy of the custody agreement signed by the parties and counsel or an appropriate declaration is attached to the application.

Pursuant to Family Code section 3064, other than stipulated orders, ex parte orders regarding child custody and visitation will be granted only upon a clear showing of immediate harm to the child or immediate risk that the child will be removed from the State of California.

(Adopted 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2008)

Rule 5.3.15

Ex Parte Motions Regarding Vacation and/or Holiday Schedules

Ex parte motions to change a child's vacation or to request a change to the holiday visitation schedule or the school that the child attends are disfavored. Requests for such changes should be presented on a regular motion calendar. A judicial officer may grant an order shortening time for such hearing.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

CHAPTER 4
TEMPORARY RESTRAINING ORDERS (TRO's)

Rule 5.4.1

Appropriate Forms and Filing with the Sheriff

When seeking a TRO pending a court hearing, the current forms adopted by the Judicial Council must be used. In all cases, including cases which are not filed under the Domestic Violence Protection Act, parties seeking personal conduct, stay away, or residence exclusion orders must file an Order to Show Cause and Temporary Restraining Order and an Application and Declaration for Order (Domestic Violence). If custody or visitation orders are requested, parties must also file a Child Custody, Visitation and Support Request (DV-105) and a Child Custody and Visitation Order (DV-140).

The court will deliver a copy of the protective restraining order to the Sheriff for entry into the Department of Justice's computer system (CLETS). For the protective order to be enforced, the protected person must give a conformed, certified copy of the restraining order to the Office of the San Diego County Sheriff for service.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008, Rev. 1/1/2009)

Rule 5.4.2

Residence Removal Orders

Upon ex parte application, the court may issue a residence removal order pursuant to Family Code section 6321. If granted, a separate removal order (Order For Removal From Residence, SDSC D-072) directing the Sheriff to assist in the removal must be prepared and submitted to the court for signature. Two certified copies of the removal order are required by the Sheriff.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.4.3

Personal Conduct Orders

Upon ex parte application, the court may issue temporary personal conduct restraining orders pursuant to Family Code section 6320.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.4.4

Status of TRO When Hearing is Continued

Only the court may issue the TRO or continue the hearing on a domestic violence restraining order. TROs will not remain in effect during the continuance, absent a stipulation or court order. The moving party must submit Form DV-125 and Form EA-125 to the court, which if granted, would provide for the TRO to remain in effect pending the continued hearing. The party must then give the form to the Sheriff's office.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008; Rev. 1/1/2009)

Rule 5.4.5

Restraint of Accounts

The court will not grant a temporary restraining order to enjoin the removal of funds or securities from financial institutions or securities firms unless there is notice to the opposing side or a declaration stating facts which show a clear danger of the dissipation of funds.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.4.6

Restraining Orders in Non-Domestic Violence Cases

In non-domestic violence cases where orders other than custody and personal conduct, stay away, or residence exclusion are requested, parties must file an Order to Show Cause, an Application for Order and Supporting Declaration, and Temporary Orders. (FL-300 & 305.) In non-domestic violence cases, the party must prepare a declaration on a separate sheet and attach it to the Application.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

CHAPTER 5
ORDERS TO SHOW CAUSE/
LAW & MOTION RULES

Rule 5.5.1

Form of Papers Presented for Filing

All papers presented for filing must comply with the California Rules of Court, rule 2.100 et. seq. and rule 3.10. After the initial filing, all pleadings must bear the case number and the name of the judicial officer to whom the case has been assigned. The date, time, and department where the matter is to be heard must also be designated on the first page beneath the case number and nature of the paper. All OSCs and/or motions must indicate a time estimate immediately beneath the case number on the first page of the pleading.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

Rule 5.5.2

Exhibits Lodgments and Highlighting

Exhibits filed or lodged by Petitioner/Plaintiff must be numbered consecutively for each hearing beginning with Number 1. Exhibits filed or lodged by Respondent/Defendant must be lettered consecutively for each hearing beginning with Letter A. The evidentiary foundation for the exhibits must be set forth in the appropriate declarations filed with the court. A notice of lodgment listing the documents must be filed and served on all parties, and a copy must be submitted with the lodged material. Documents lodged with the court must be tabbed and highlighted as required by the California Rules of Court to correlate to the notice of lodgment. Each document, particularly deposition testimony, must be marked in a manner that calls attention to the relevant portion(s) of the document or testimony. Exhibits accompanying a Motion or Order to Show Cause which exceeds 10 pages must be lodged rather than filed with the court. The provisions of the California Rules of Court, rules 3.116 and 3.1302 apply.

Lodged documents will be stamped "received" by the court. Following the return of the lodged documents by the court, the party lodging them must retain them until the applicable appeal period has expired. Due to limitations of storage space, counsel may not lodge exhibits more than 10 court days prior to the hearing except by court order. The party or his/her counsel must retrieve all lodged documents from the courtroom within five court days following the hearing or they may be discarded without further notice.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

Rule 5.5.3

Time for Service and Filing of Papers

Absent an order shortening time, all moving, opposing, and reply papers, as well as Orders to Show Cause, must be filed and served in compliance with Code of Civil Procedure section 1005, subdivision (b).

If an FCS appointment has been set, all papers for the mediator's review must be served in compliance with local rule 5.10.2.D.

Supplemental declarations to inform the court of new or different facts must be filed and personally served by either party up to five court days before the hearing. Responses to supplemental declarations must be filed and personally served before 10:00 a.m. two court days before the hearing. No reply declarations are permitted except as follows: If a party personally serves supplemental declarations at least 10 court days before the hearing, then responses to the supplemental declarations must be filed and personally served at least five court days before the hearing. Replies to responding declarations must be filed and personally served by 10:00 a.m. two court days before the hearing. The court may decline to consider any supplemental declarations which are not timely served or do not appear to be the result of newly discovered evidence or facts which were not available when the original pleadings were filed, or where the supplemental pleadings were filed late to gain a tactical advantage.

In cases where a temporary restraining order or a protective order has been issued under either Family Code sections 240, 2040 (children, property and insurance), 4620 (disposable property), 6320 (Domestic Violence Prevention Act), or 7710 (Uniform Parentage Act), filing and service of the moving and supporting papers must be in compliance with Family Code sections 242 and 243.

If a party objects to a pleading as not being timely served, the court may, in its discretion, refuse to consider the pleading or, for good cause shown, continue the hearing.

Post-judgment motions must be served pursuant to Family Code section 215. Service of post-judgment motions on the responding party's attorney is insufficient.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. & Renum. 1/1/2008)

Rule 5.5.4

Family Court Services Initial Screening Form

When filing an OSC regarding custody or visitation, the moving party must file a Family Court Services Screening Form (SDSC FCS-046).
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

Rule 5.5.5

Income and Expense Declarations

A current Income and Expense Declaration with verification of income pursuant to Local Rule 5.6.3 must be filed and served with the moving papers for any hearing involving financial issues, such as support, attorney fees and costs. Failure to comply with this rule may subject the party and/or his/her attorney to sanctions pursuant to Code of Civil Procedure section 575.2.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

Rule 5.5.6

Companion Matters

A party may file a companion matter only if reasonably related to the issues raised by the original OSC or motion. The companion matter must be filed and personally served by 10:00 a.m. five court days before the hearing.

A response to a companion matter must be filed and personally served by 10:00 a.m. two court days before the hearing. No written replies are permitted.

Ex parte leave of court must be obtained prior to filing a companion matter to a hearing that has been specially set by the court.

Requests for attorney fees and standard restraining orders may be addressed in the responsive declaration without filing a companion matter. The same is true for affirmative relief regarding modification of support, custody, or visitation when the moving papers seek modification of support, custody, or visitation.

Absent prior court order, an Order to Show Cause re Contempt may not be filed as a companion matter and must be heard on a date before any other pending motions involving the same or similar subject matter. However, a request to determine arrears and/or for attorney fees and costs may be filed as a companion matter to an Order to Show Cause re Contempt for Failure to Pay Support.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. & Renum. 1/1/2008)

Rule 5.5.7

Reissuing Orders to Show Cause

Except as provided to the contrary in Family Code section 3062, OSCs not timely served may be "reissued" by the clerk, provided the original matter was filed less than 30 days before re-issuance is requested and the applicant files a completed form, "Application and Order for Reissuance of Order To Show Cause" (FL-306). A reissuance filed more than 30 days after the original filing requires a judicial officer's signature.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

Rule 5.5.8

Hearings On Orders to Show Cause and Noticed Motions

A. Calendaring. The Business Office will assign hearing dates on all OSCs and motions. Hearing dates are not available by telephone. The business office will advise as to the approximate setting dates. In addition, the court's website provides a ten-week calendar for domestic cases to assist counsel in selecting a date. Preferred dates and times for hearings may be indicated to the business office on the messenger slip or by other writing addressed to the clerk, such as a post-it note attached to the front page of the OSC. Absent good cause, hearings will proceed on the date set.

1. Motions to set support, or other motions in which the date of filing determines retroactivity, may be filed without setting a hearing date. The pleading must plainly state "NO HEARING DATE REQUESTED" just below the hearing date line. The motion must then be filed *sine die* (without a specific date). A copy of all pleadings nonetheless must be served promptly on the opposing counsel/party. The moving party must submit the following to set a hearing date in the ordinary course within 180 days of the original filing:

a. A new motion/OSC form as previously filed, but without the request for no hearing date.

b. A conformed copy of the first page of the originally filed motion/OSC.

c. Any new or additional affidavits or exhibits supporting the motion/OSC.

d. A proof of service showing the opposing party was properly served with the original motion/OSC as set forth above.

If the hearing is not set in the ordinary course 180 or fewer days after the original filing, the motion/OSC is off calendar. The court will not approve an order shortening time. If the moving party fails to provide a proof of service showing prompt notice to the opposing party following the original filing (no more than 15 days), the motion/OSC is off calendar. In both instances, the court loses the authority to award retroactive support.

2. At the time a hearing date is requested, the originally-filing party may separately file other and further motions/OSC's to be heard at the same date and time.

3. The opposing party may file a separate motion/OSC to determine support at any time.

B. Time Estimates. All OSCs and/or motions must indicate a time estimate immediately beneath the case number on the first page of the pleading. Short cause OSC matters are those which take no more than 20 minutes of court time. Long cause OSC matters are those which take more than 20 minutes but less than 40 minutes. Matters which require more than 40 minutes must be specially set by the court.

C. Continuances. Stipulated continuances of noticed motions or OSC's except contempt and domestic violence matters may be granted by telephone until 3:30 p.m. two court days before the scheduled hearing. The stipulated continuance may be made to any available court date and time as requested by counsel. Telephone requests for stipulated continuances should be directed to the calendar clerk for the department. The court may also grant stipulated continuances at the time of the calendar call. Nevertheless, if counsel has a good faith belief the hearing will not be heard on the merits at the scheduled date, a "Don't Read" notice should be provided in the same manner as a stipulated continuance. In all other instances, counsel and the parties should appear ready to proceed with the hearing.

Only the Court may issue the TRO or continue the hearing on a domestic violence restraining order. TRO's will not remain in effect during the continuance, absent a stipulation or court order. The moving party must obtain a "Reissue Temporary Restraining Order" (Form DV-125 and EA-125) from the Court and submit the order to the Sheriff's Office.

Continuances of OSC's re contempt must be requested in open court, with the citee present, or obtained by written stipulation including a signed consent by the citee to the continuance and a waiver of time to hear the contempt. The stipulation must be filed with the court at or before the time set for the original hearing. If the citee does not appear, upon request, a bench warrant will normally be issued and held until the new date to retain jurisdiction.

If custody or visitation is at issue and the FCS or private mediator's report is not available at least ten days before the hearing, the court will normally grant a continuance upon request of a party who has not had ten days to review the report.

Counsel must contact the court at least two court days before any scheduled hearing if the matter will not go forward for any reason in order to prevent an unnecessary review of the file.

D. Calendar Calls. The court will attempt to accommodate counsels' calendar conflicts upon reasonable request. Requests for calendar priority should be made at the calendar call. Counsel unable to appear at the calendar call must give notice of that fact to opposing counsel at the earliest reasonable time. The court must consider sanctioning offending counsel for failure to comply with this rule.

E. Manner of Presentation. Counsel should meet and confer before presentation of the case to determine which issues are settled, which issues are to be presented to the court as contested, and the total time estimate for their presentation. Counsel must present OSC's and motions in the following order:

1. Announce appearance;

2. Give the court an accurate time estimate for the presentation of the entire matter. Failure to do so may result in the hearing being interrupted, continued, or ultimately concluded at the end of the calendar.

3. Clearly state ALL contested issues;

4. Recite any stipulated matters for the approval of opposing counsel, the parties and the Court; and

5. Briefly present argument on each contested issue including a recommended resolution.

Counsel may not interrupt the opposing side's presentation, other than with valid evidentiary objections and must direct all remarks to the court. Once the court has rendered its decision, counsel must not attempt to reargue the case. It is, however, acceptable to inquire of the Court in order to clarify a ruling or correct a mistake.

F. Chambers Conferences. Chambers conferences may be held at the discretion of the judicial officer. The purpose of a chambers conference is solely to discuss matters with the court which should not be set forth on the record in open court.

G. Stipulation Forms. Long and short stipulation forms are available in all Family Law departments. The court encourages the use of these forms in lieu of oral stipulations. After the form is completed, counsel should give the form to the clerk for immediate filing and distribution. Use of the stipulation forms will eliminate the need for the filing of a subsequent order. If counsel desires, however, a typed formal order may be prepared and filed after filing the stipulation form.

H. Limitations on Evidence/Oral Testimony. It is the general policy of this court to consider only the papers filed with the court when granting or denying applications for orders. Factual arguments must be limited to evidence, and/or reasonable inferences drawn therefrom, which are contained in declarations filed with the court and signed under penalty of perjury. The court has discretion to elicit additional information from the parties and/or counsel. Oral testimony will generally not be received. If any party wishes to present oral testimony, written declarations must still be filed in a timely manner. Written notice of the intent to present oral testimony must be served on the opposing party at least five court days before the scheduled hearing. The notice must state the name[s] of the intended witness[es] and the subject matter of the witness[es]' testimony.

The written declarations must be the direct testimony of the declarant. Oral testimony must be limited to hostile third party witnesses or cross-examination on the contents of the written declarations and/or reasonable inferences drawn therefrom. Oral testimony may also include re-direct and rebuttal, if necessary. If the intended oral testimony will be cross-examination of the opposing party, a third party who submitted a written declaration on behalf of the opposing party, or a court-appointed expert witness, the party who wishes to conduct the cross-examination must set forth in a written declaration the reasons for requesting cross-examination, and that declaration must accompany the notice of intent to present oral testimony.

Failure to give the required notice will generally result in a denial of the request for oral testimony. Even if such notice is given, the taking of oral testimony is solely at the discretion of the court.

I. Awards of Attorneys' Fees and Costs. If attorneys' fees and costs are awarded on a monthly installment basis, acceleration provisions upon default will apply such that if any two payments are missed, the entire balance will immediately accelerate and become all due and payable.

J. Extra Copies of Pleadings. Counsel must bring an extra set of all relevant pleadings to the hearing. Due to last-minute filings and the volume of business, it is not uncommon for the court file to be incomplete.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008; Rev. 1/1/2009)

CHAPTER 6
DECLARATIONS OF DISCLOSURE, INCOME & EXPENSE DECLARATIONS AND TAX RETURNS

Rule 5.6.1

Declarations Of Disclosure

All preliminary Declarations of Disclosure ("DOD") must be prepared and served in compliance with Family Code sections 2103 and 2104.

All final DOD's must be prepared and served in compliance with Family Code section 2105 unless waived in compliance with Family Code section 2105, subdivision (d) or Family Code section 2110.

Pursuant to Family Code section 2106, except as provided in subdivision (d) of Family Code section 2105 or in Family Code section 2110, absent good cause, no judgment with respect to the parties' property rights will be entered without each party executing and serving their final DOD and filing a Proof of Service of the DOD. "Good cause" can only be established by a declaration, signed under penalty of perjury, stating sufficient supporting facts.
(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 5.6.2

Income and Expense Declarations

A current Income and Expense Declaration, and verification of income pursuant to Local Rule 5.6.3, must be filed *with the moving and responsive papers* for any hearing involving financial issues, such as support, attorney fees and costs. An Income and Expense Declaration is current if it is executed within 90 days of the hearing. Supplemental, updated, or responsive Income and Expense Declarations must be served at least five court days before the hearing.

The Income and Expense Declaration should be printed on green paper, and all portions of the form must be completed. The gross income of a co-habitee or new spouse must be set forth as provided on the Income and Expense Declaration, and all cash, funds on deposit, stocks, bonds, and other easily sold assets must be fully disclosed.

When attorney fees or costs are requested, the court requires actual amounts be entered on the lines "Cash and checking accounts, savings, credit union, money market, and other deposit accounts," and "Stocks, bonds and other assets I could easily sell." The attorney fees paid to date must be completed and must include all monies held in trust by the attorney for fees and costs. The fees owed to date provision must not include fees that have been paid. Insertion of the word "unknown" does not constitute compliance with this rule.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.6.3

Attachments to Income and Expense Declaration

To verify current income, parties must serve copies of the following documents with their Income and Expense Declaration. Documents that are required by this rule to be served with the Income and Expense Declaration may be lodged with the court at the time of the hearing.

For salaried employees: The prior calendar year's W-2 and all pay stubs for the last two months showing all forms of year-to-date earned income.

For self-employed individuals, including independent contractors: A schedule reflecting all compensation received year-to-date and the last two filed IRS 1040 Schedule C or C-EZ; profit-and-loss statements and balance sheets for the two prior calendar years and the current year-to-date.

For employees who are shareholders in a closely-held corporation: The prior calendar year's W-2; all pay stubs for the last two months showing all forms of year-to-date earned income; all IRS K-1's for the two prior years; the last filed IRS Schedule E (Part II); profit and loss statements and balance sheets for the two prior calendar years and the current year-to-date.

For partnership income: A schedule reflecting all compensation received year-to-date, all IRS K-1's for the two prior years; the last filed IRS Schedule E (Part II); profit and loss statements and balance sheets for the two prior calendar years and the current year-to-date.

For rental income: The last filed IRS Schedule E (Part I); summaries of all rental receipts, deposits, disbursements and expenses for the prior calendar year, and for all periods year-to-date.

For dividend income, interest income or other unearned income: The prior calendar year's IRS 1099's; the last filed IRS Schedule B; an itemized summary of all funds on deposit, shares of stock, bonds, or other income-producing assets owned, and the rate of return currently being paid thereon; and, any income derived therefrom during the prior calendar year, and year-to-date.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.6.4

Disclosure of Income Tax Returns

When child, family, or spousal support is requested, a party may require the opposing party to provide income tax returns pursuant to Family Code section 3552. A request for tax returns must be made no later than 10:00 a.m. five court days before the hearing. The tax returns including all Schedules, W-2's, 1099's and K-1's must be provided to opposing counsel on the earlier of five court days after the request or 10:00 a.m. two court days before the hearing.

Tax returns served pursuant to this rule must not be filed with the court except as provided in Family Code section 3552.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.6.5

Privileges Retained

The above rules concerning attachments to Income and Expense Declarations and production of income tax documents are subject to any and all privileges held by a party or any third party whose privilege for non-disclosure would be violated by a party complying with these rules.
(Adopted 1/1/2005; Renum. 1/1/2006)

CHAPTER 7
ONE DAY TRIALS

Rule 5.7.1

One Day Trials

A. Time Limit. One day trials may not exceed one court day including time for the judge to review the file, read the trial briefs, and issue a ruling. Cases that exceed the one day time limit may result in a mistrial and be rescheduled as a long cause trial.

B. Calendaring. The court will set one day trials as its calendar permits. The court may continue a trial for good cause shown. If counsel or parties intend to request a continuance by stipulation, notice thereof must be given to the court as specified in Local Rule 5.5.8.C above.

C. FSD. See Chapter 9 of these rules for additional information governing trials in FSD.

D. Custody and/or Visitation Issues. If custody or visitation is in issue, the parties must meet with FCS before trial. This meeting must be scheduled sufficiently in advance of trial to allow the counselor to prepare and file a recommendation at least 30 calendar days before the scheduled trial date.

E. Mandatory One Day Trial Statements. Counsel or parties must prepare, file, and serve a trial statement, and if financial matters are at issue, current Income and Expense Declaration. The Trial Statement must be in the form set forth in form "Mandatory Trial Statement" which can be found at www.sdcourt.ca.gov under family law forms. Copies of these documents must be served personally on opposing counsel or parties no later than 2:00 p.m. two court days before trial. The originals of the trial statement and a current Income and Expense Declaration must be filed with the clerk in the trial department by **3:00 p.m. two court days** before trial. Failure to timely serve and file the trial statement and current Income and Expense Declaration may subject the non-complying counsel to sanctions. This rule does not apply to long cause OSCs.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

CHAPTER 8
LONG CAUSE TRIALS

Rule 5.8.1

Long Cause Trials

A. Time Limit. Any trial with a time estimate exceeding one court day is a long cause trial.

B. Trial Setting. The court will set a trial date based on the time estimate at the final CMC, or following the MSC. Inaccurate time estimates may result in a mistrial and sanctions.

C. Trial Preparation. Rule 5.8.2 lists the preparation required prior to a long cause trial. The parties are to prepare and submit the Mandatory Trial Statement, which can be found at www.sdcourt.ca.gov under family law forms, together with the List of Proposed Exhibits, List of Witnesses, Notice of Motions in Limine and Objections to Exhibits of Petitioner/Respondent, not later than seven calendar days prior to trial.

D. Assignment to a Different Court for Trials Estimated Over Two Days

1. When a trial is estimated to last two or more days, the court in which the case is currently assigned may assign the case to either another family law department or to the general civil calendar.

2. The Monday prior to trial call, the court will conduct a pretrial conference to verify that the parties have complied with Rule 5.8.2.

3. Continuances of the trial date may only be granted in the family law court prior to assignment for trial, and only upon a showing of good cause.

4. If the case is to be assigned to the general civil calendar, trial call will be on a Friday, in the Presiding Department of the Central Courthouse. The case may be trailed until a trial department becomes available. The trial judge may confer with counsel on that Friday, but no witnesses will be examined.

5. All in limine motions will be heard by the judge assigned for trial.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.8.2

Long Cause Rules

For any trial set on the long cause trial calendar (these rules do not apply to long cause OSCs) counsel must:

A. SEVEN COURT DAYS OR MORE BEFORE TRIAL

Personally meet and confer to exchange all of the following documents:

1. Trial statements

2. Trial briefs

3. Where support or fees are at issue, current Income and Expense Declarations including all required attachments.

4. A list of proposed exhibits and copies of actual exhibits. (In custody trials, counsel need not exchange the expert's test data, notes, etc., related to an evaluation previously performed if the data and report were previously provided to each counsel).*

5. A list designating non-party witnesses (including name, address and telephone number) and the subject matter of each witness's testimony (see attachment 2).*

B. FOUR COURT DAYS BEFORE TRIAL

1. Telephonically meet and confer to discuss stipulations on admissibility of exhibits, specifying objections to each exhibit to which admissibility is not stipulated, and discuss all aspects of any intended in limine motions.

2. If objections to exhibits are unresolved, or a motion in limine is to be filed, schedule appointment with court for pretrial conference to be held at least 2 court days before trial.

3. File with the clerk of the trial department and personally serve on opposing counsel any in limine motions .

4. Arrange with the clerk of the trial department a date and time to pre-mark exhibits and to file original exhibits.

5. File trial statement, trial brief, Income and Expense Declaration and Court's copy of the exhibits with the clerk of the trial department.

C. THREE COURT DAYS BEFORE TRIAL

File with the clerk of the trial department and personally serve on opposing counsel a written list of objections to the exhibits of the other party.

D. TWO COURT DAYS BEFORE TRIAL

If there are unresolved objections to exhibits or if motions in limine were filed, both counsel must confer personally with the Court to discuss the objections and motions. At that time, the Court may issue a tentative ruling on the issues presented.

E. DAY OF TRIAL

1. All objections to exhibits and motions in limine will be heard on the record and a ruling will be issued before the presentation of opening argument.

2. Each party must pay the mandated statutory court reporter fee for each half day of trial. It is the duty of counsel to know the amount of that fee before the day of trial so that counsel can deliver this amount to the clerk in the trial department before the start of each half day of trial. The amount must be paid in cash or check. Checks can only be from a party or the attorney's client trust account. Checks must be made payable to the Clerk of the Superior Court.

3. Each day, the morning session of trial will usually begin at 9 a.m. and end at noon with a 15 minute break at approximately 10:30 a.m. The afternoon session will usually begin at 1:30 p.m. and end at 4:30 p.m. with a 15 minute break at approximately 3:15 p.m. At the end of each day of a multi-day trial, counsel and the Court will review the next day's witnesses, examination time and any other calendaring issues.

*Any witnesses not disclosed pursuant to these rules will not be permitted to testify at trial. Any exhibits not exchanged pursuant to these rules will not be introduced at trial. The only exceptions are true impeachment or rebuttal witnesses or exhibits.

CHAPTER 9
FAMILY SUPPORT DIVISION MATTERS

Rule 5.9.1

Calendaring

A. Cases to be heard in FSD. Except as otherwise provided by law, all matters involving the DCSS will be set and heard on the FSD Calendar.

1. All Domestic matters filed with the County of San Diego involving parentage determinations or support issues where DCSS has an open case will be heard on a FSD Calendar unless DCSS has provided a written waiver agreeing to the matter being heard in another Family Law court location.

2. Written notice to DCSS is required for any proceeding in a case in which there has been previous DCSS involvement or where one or both of the parties are currently receiving, have received, or intend to apply for any form of public assistance unless not required per Family Code section 17404, subdivision (e)(4). Such notice must be in accordance with Code of Civil Procedure section 1005, subdivision (a) and served on DCSS.

B. FSD Departments. FSD matters are heard in the Central and North County Divisions. Locations and directions are available at www.sdcourt.ca.gov.

C. FSD Calendar Call. The FSD Calendars are called as listed at www.sdcourt.ca.gov or as otherwise determined by the court.

D. Mandatory Meet and Confer. On the day of hearing, prior to appearing in court on a calendared matter, all parties/counsel must meet and confer with the DCSS.

E. Pre-Read Requests in FSD Hearings. If a party or counsel would like the court to read the file prior to a hearing, a pre-read request must be submitted to the court by 12:00 p.m. two days prior to the hearing. Notice of the pre-read request must be given to all parties prior to the submission. If a party or counsel objects to the pre-read request, he or she shall notify the court of their specific objections. Objections shall not prevent the pre-read. For pre-read requests that designate eight or more documents, the requestor must make arrangements with the court to identify the documents in the file with yellow tags.

1. Pre-Read Requests for North County hearings. All pre-read requests are due by 12:00 p.m. one week prior to the hearing date. All other pre-read rules apply.

2. Pre-Read Requests for Trials or Long Cause Hearings. A pre-read request is not required for trials or long cause hearings. Pre-reads will be done by the court on these cases as a matter of course.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.9.2

Telephonic Hearing Requests

A. Request for Telephonic Appearance. The FSD court, in its discretion, may grant a telephonic appearance pursuant to California Rules of Court, rule 5.324 when the DCSS is providing services under Title IV-D of the Social Security Act.

1. Telephonic Appearances are NOT permitted for any of the following:

a. Contested trials, contempt hearings, orders of examination, and any matters in which the party or witness has been subpoenaed to appear in person; and

b. Any hearing or conference for which the court, in its discretion on a case by case basis, decides that a personal appearance would materially assist in a determination of the proceeding or in resolution of the case.

B. Timing of Requests for Telephonic Appearance. Any requests for telephonic appearance must be made at least 12 court days before the hearing utilizing the Request for Telephonic Appearance form (FL-679). The request must be served on all parties by personal delivery, fax, express mail, or other means likely to ensure delivery by the close of business the next court day.

C. Opposition to Request for Telephonic Appearance. Any opposition to a request for telephonic appearance must be under penalty of perjury and served on all parties at least eight court days before the hearing. Service of the opposition may be accomplished through the same methods allowed for requesting a telephonic appearance.

D. Notice by the Court. At least five court days prior to the hearing, the court will notify all parties of its decision.

E. Meet and Confer. All parties granted a telephonic appearance must meet and confer with the DCSS by telephone prior to their telephonic appearance. For the meet and confer, parties must be available at the number listed on their telephonic appearance request form for at least two hours prior to their hearing.

F. Filing of Documents. If a telephonic appearance request is granted, the requesting party must file and serve all relevant documents as required pursuant to Chapter 5 of these rules.

(Adopted 1/1/2008)

Rule 5.9.3

Conduct of Long Cause Hearings and Trials

Long cause hearings and trials set on the Friday FSD calendar or set on the short cause FSD calendar are governed by the rules and readiness procedures as set forth below.

A. Long Cause Hearings

1. Mandatory Meet and Confer. The Monday before the hearing date counsel/parties are ordered to meet and confer either in person or by telephone. On the day of the hearing, DCSS will provide a status report to the court as to the following issues:

a. Issues resolved by stipulation;

b. Contested issues; and

c. Time estimate.

2. Evidence. Long cause hearings are generally limited to factual arguments based on evidence and/or reasonable inferences drawn therefrom, which are contained in declarations filed with the court and signed under penalty of perjury.

3. Oral Testimony. If any party wishes to present oral testimony, written declarations must still be filed in a timely manner. Written declarations must be the direct testimony of the declarant.

4. Notice of Intent. Written notice of the intent to present oral testimony must be served on the opposing party at least five court days before the scheduled hearing. The notice must state the names of the intended witnesses and the subject matter of the witnesses' testimony.

5. Limitations on Oral Testimony. Oral testimony is limited to hostile third party witnesses or cross examination on the contents of the written declarations and/or reasonable inferences drawn therefrom.

a. Oral testimony may also include re-direct and rebuttal, if necessary.

b. If the intended oral testimony will be cross examination of the opposing party, a third party who submitted a written declaration on behalf of the opposing party, or a court appointed expert witness, the party who wishes to conduct the cross examination must set forth in a written declaration the reasons for requesting cross-examination. That declaration must accompany the notice of intent to present oral testimony.

c. Failure to give the required notice will generally result in a denial of the request for oral testimony.

d. Even if proper notice is given, the taking of oral testimony will be left solely to the discretion of the court.

B. Trials

1. Mandatory Meet and Confer. The Monday before the trial, counsel or parties are ordered to meet and confer either in person or by telephone. On the day of the hearing, DCSS will provide a status report to the court as to the following issues:

a. Issues resolved by stipulation;

b. Contested issues; and

c. Time estimate.

2. Filing and Exchange of Documents. By 2:00 p.m. on the Wednesday before trial, counsel/parties must file in the trial department and exchange all documentation including but not limited to the following:

a. Any and all pleadings including but not limited to trial statement and trial briefs, which must include a list of issues, whether contested or uncontested;

b. Where support or fees are at issue, current Income and Expense Declarations including all required attachments pursuant to these rules;

c. A list of proposed exhibits and copies of actual exhibits which are to be pre-marked prior to the trial date; and

d. A list designating non-party witnesses including the witness' name and the subject matter of each witness' testimony.

3. Mandatory Trial Statement. A mandatory trial statement for an FSD matter must include all relevant items listed in the Mandatory Trial Statement form available at www.sdcourt.ca.gov under Family Law forms.

4. Failure to Disclose Witnesses or Exchange Exhibits. Any witnesses not properly disclosed will not be permitted to testify at trial. Any exhibits not properly exchanged may not be introduced at trial. The only exceptions are true impeachment or rebuttal witnesses or exhibits.

5. Stipulations Before Trial or Long Cause Hearing. Should counsel/parties reach a full stipulation at any time prior to the hearing date, the DCSS must inform the court immediately. Stipulations may be entered on the record at the scheduled hearing or trial date or submitted in writing by ex parte hearing at least one court day prior to the scheduled trial or hearing.

(Adopted 1/1/2008; Rev. 1/1/2009)

Rule 5.9.4

Time for Ex Parte Matters

Ex Parte matters will be heard as posted at www.sdcourt.ca.gov. All other requirements as set forth in Chapter 3 as to notice, meet and confer, and the preparation of an ex parte application and proposed order apply.

(Adopted 1/1/2006; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

Rule 5.9.5

Orders

A. Orders Involving the DCSS. All orders involving DCSS will include the following provisions:

1. All payments must be made by wage assignment payable to the State Disbursement Unit;

2. The payor must make all payments directly to the State Disbursement Unit unless payments are fully collected by wage assignment;

3. The payor must provide DCSS with his/her date of birth, Social Security Number, income, employer's name, employer's address, and residential address; and

4. The payor must notify DCSS in writing within 48 hours of any change of address, income, or employment;

B. Stipulations. All stipulations reached in matters involving DCSS must be reviewed and signed by a DCSS attorney before being submitted to the court. If DCSS does not sign the stipulation, one of the parties may place the issue before the court on an ex parte basis.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

Rule 5.9.6

Custody/Visitation Matters

A. Custody and visitation matters are NOT heard in FSD departments. The parties may use the DCSS case number to litigate issues of custody and visitation provided there is a judgment granted in the case. Matters involving issues of custody/visitation are to be filed and heard in the courts of proper venue, i.e. case numbers beginning with:

Case Designation:	To be heard at:
D - Central Division	– 1555 Sixth Avenue, San Diego, CA 92101
DN - North County	– 325 South Melrose, Vista, CA 92081
DE - East County	– 250 East Main Street, El Cajon, CA 92020
DS - South County	– 500 Third Avenue, Chula Vista, CA 91910

DF - Appropriate division depending on the residences of the children and parties.

B. When an Order to Show Cause involving custody or visitation and child support is filed in a case involving DCSS, the filing clerk in the appropriate venue must provide hearing dates as follows:

1. Mediation Date for FCS;
2. Court hearing date for the issues of custody/visitation; and
3. FSD hearing date.

C. OSCs and motions involving custody or visitation must be served on all appropriate parties in accordance with Code of Civil Procedure section 1005.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

CHAPTER 10
CUSTODY/VISITATION MEDIATION AND EVALUATIONS; VISITATION MONITORS

It is recommended that prior to filing an OSC/motion to address disputed issues of child custody or visitation that the parties enroll in a parent education class or participate in family therapy to gain an understanding of the negative impact conflict has on children.

Rule 5.10.1
Mediation Required

Before a hearing on any disputed issue of custody or visitation, the parties must participate in mediation either with a mediator at FCS of the Superior Court or a private mediator retained by the parties. The court may make temporary custody and/or visitation orders pending the hearing. Unless otherwise stipulated by the parties or ordered by the court, FCS mediation and private mediation in San Diego County is understood to be a non-confidential process which means that the information provided to the mediator is not confidential and if the parties do not reach an agreement through mediation, the mediator will submit a recommendation to the court with reasons for the recommendation. Upon a showing of good cause, the court may order that the parties and their minor children undergo a psychological evaluation or custody evaluation to assist in addressing any disputed issue of custody or visitation.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.10.2
Mediation at FCS

Except in cases where the parties stipulate or the court orders private mediation, all disputed custody or visitation matters must be mediated at FCS**.** Parties filing an OSC regarding custody and visitation earlier than six months following their last FCS mediation may appear before the court ex parte to request that the court re-refer the case to FCS. Absent a showing of good cause, the court will not set a new FCS mediation until at least six months have passed since the last such mediation. The locations and telephone numbers of FCS are on the San Diego Superior Court website (www.sdcourt.ca.gov).

A. Initiating FCS Mediation.

1. If unanticipated child custody or visitation issues are raised for the first time at a hearing, the court may make a temporary custody/visitation order and may order the parties to participate in FCS mediation. The

parties must meet with an FCS mediator before the court will make final orders regarding a disputed custody/visitation issue.

2. The moving party must file a completed Family Court Services Screening Form (SDSC FCS-46) with the moving papers if custody/visitation is at issue. The business office will assign both a hearing date and an FCS appointment and insert both dates on the moving papers. Both parties are required to attend and participate in the FCS appointment.

B. Resolution; Cancellation, or Rescheduling; Sanctions. Parties are encouraged to try to resolve child custody/visitation disputes before the mediation.

1. If the disputed custody/visitation issue is resolved prior to the FCS mediation, the moving party/attorney must promptly notify the other party/attorney and call FCS to cancel the mediation.

2. Cancellation. Parties may cancel FCS mediation if the custody/visitation issue is dismissed or the parties choose to participate in private mediation prior to the FCS date. The requesting party must notify FCS of the cancellation at least two court days prior to the FCS mediation date.

3. Rescheduling. Parties may reschedule the FCS mediation one time by stipulation by giving notice to FCS at least two court days prior to the mediation date. Subsequent requests to reschedule mediation require court approval, and the requesting party must provide FCS with a copy of the court order granting the scheduling change.

4. Sanctions. Failure to cancel or reschedule mediation at least two court days before the mediation date or failure to attend and participate in the mediation may subject the offending party to monetary sanctions of up to $1,500.

C. Mediation Data Sheet

1. At or before the FCS mediation, each party must submit a completed FCS Mediation Data Sheet to the FCS office. No attachments are permitted to the Mediation Data Sheet.

2. Parties appearing in FCS mediation by telephone must mail a completed FCS Mediation Data Sheet to the FCS office at least five calendar days before the mediation date.

D. Writings and Other Materials for FCS Review; Notice.

1. A party/attorney may provide FCS with writings and other materials including declarations, letters, or other documents for the mediator's review. FCS will only accept the writings and other materials if counsel/party does the following:

a. Serves the writings and other materials on the other party/attorney in accordance with subsections 2 and 3; or

b. Serves written notice on the other party/attorney listing the writings and other materials submitted to FCS in accordance with subsections 2 and 3; and

c. Provides FCS with a copy of the Proof of Service of the writings and other materials and the written notice prior to the start of the mediation session.

2. Service by Moving Party on the Other Party/Attorney. The following constitutes proper service by the moving party: if personally served, at least nine court days before the mediation conference, and if served by other means, the required nine court day period is increased in accordance with Code of Civil Procedure section 1005.

If the FCS mediation date is set 20 or fewer days from the filing of the OSC, the moving party may appear ex parte to request a shorter time for service.

3. Service by Responding Party on the Other Party/Attorney. The following constitutes proper service by the responding party: if personally served, at least two court days before the mediation conference, and if served by other means, the required two court day period is increased in accordance with Code of Civil Procedure section 1005.

4. Expedited Mediation. In the case of expedited mediation, there must be no writings or other materials submitted to FCS for the mediator's review absent court order.

5. Documents Requested by FCS. FCS may request the parties submit additional documents for consideration. Copies of the documents must be provided to the other party concurrently with the submission to FCS.

E. Attendance at Mediation. Other than a statutorily authorized support person, only the parties may attend the mediation. The attorneys do not participate in the FCS mediation. If the mediator wants to interview the child or other person(s), the mediator will arrange for such interviews.

F. Telephone Conference. If an in-person meeting with a mediator at FCS is not feasible, such as when one party resides outside the County of San Diego, mediation will be conducted by telephone with that party. The party appearing telephonically must call FCS to obtain an FCS Mediation Data Sheet for submission to FCS in accordance with subsection C above. The party appearing telephonically shall call FCS at the time designated for the mediation.

G. Agreements Reached in Mediation. If the parties reach an agreement during mediation, the mediator will prepare a written agreement, approved and signed by the parties, and file it with the court.

H. Unresolved Issues in Mediation. If the parties are unable to resolve issues of custody or visitation through mediation, the FCS mediator will submit a written recommendation with reasons for the recommendation to the parties, their attorneys and the court before the custody hearing. If the FCS recommendation is not available at least 10 calendar days before the hearing, the court will generally grant a continuance upon a party's request.

I. Cross Examination of FCS Mediator. A party has the right to cross-examine the FCS mediator at trial or special set hearing. FCS mediators are employees of the Superior Court. A party desiring the testimony of a FCS mediator at trial or special set hearing should first contact FCS to determine availability on the desired date. A subpoena must then be served on FCS at least 10 days in advance of the hearing with fees deposited as required by Government Code sections 68097, 68097.1, and 68097.2. The court will not authorize depositions of mediators absent a showing of extraordinary good cause, such as prolonged unavailability of the mediator on or about the time of trial. Certain privileges attach to FCS files. Judicial officers will not order the release of any FCS documents without a prior in-camera review. A party desiring an in-camera review shall serve a subpoena duces tecum upon FCS for the file/documents at least 15 days before the trial or special set hearing, and if an objection is received, must schedule a motion to compel or Order to Show Cause to obtain the in camera review.

J. Communication with FCS. Communications between mediators, parties, attorneys, including minors' counsel, are governed by Family Code sections 216 and 1818.

K. Request for Change of Mediator.

1. Perceived Bias of Mediator. Should a party believe that a particular mediator is biased in a way that affects the fair and equal treatment, the party may bring this matter to the attention of the Director of FCS for consideration of this perception and assignment to a different mediator.

2. Procedure for Change of Mediator. A peremptory challenge of a mediator is not allowed. However, a party may request a change of mediator by following these rules.

a. During Mediation. A party must request a change of mediator as soon as sufficient basis for a change is known. No request to change a mediator will be granted unless there is a demonstrable showing of bias or prejudice against one of the parties or their attorney such that an independent, fair, and impartial recommendation cannot be made to the court.

b. Subsequent Court Proceedings. If either party files a subsequent court proceeding requiring FCS mediation, either party may, at the time of the assignment, request a different mediator, without a showing of good cause.

(Adopted 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. & Renum. 1/1/2008; Rev. 1/1/2009)

Rule 5.10.3

Private Mediation

A. Initiating the Private Mediation.

1. The parties may stipulate that the issues of custody and visitation be referred for private mediation prior to FCS mediation or in addition to other recommendations made by FCS or an evaluator.

2. The court may order private mediation upon the request of either party.

B. Scope of the Mediation. A formal order must be prepared setting forth the scope of the mediation; identifying the mediator; setting forth the payment plan for the mediator's services; setting forth whether the mediation is confidential or non-confidential; and such other matters as the court deems appropriate. Conformed copies of the order must be provided to the mediator and all parties/attorneys.

C. Mediator Qualifications. Mediators must meet the qualifications, training and continuing education requirements of Family Code sections 1815 and 1816, and will be required to acknowledge that they are so qualified and trained.

D. Writings and Other Materials for Mediator's Review; Notice

1. A party/attorney may provide the mediator with writings and other materials including declarations, letters, or other documents for the mediator's review. The mediator will not accept the writings and other materials unless the party/attorney does the following:

a. Serves the writings and other materials on the other party/attorney in accordance with subsections 2 and 3; or

b. Serves written notice to the other party/attorney listing the writings and other materials submitted to the mediator in accordance with subsections 2 and 3; and

c. Provides the mediator with a copy of the Proof of Service of the writings and other materials and the written notice prior to the start of the mediation session.

2. Service by Moving Party on the Other Party/Attorney. The following constitutes proper service by the moving party: if personally served, at least nine court days before the mediation conference, and if served by mail, the required nine court day period is increased in accordance with Code of Civil Procedure section 1005.

3. Service by Responding Party on the Other Party/Attorney. The following constitutes proper service by the responding party: if personally served, at least two court days before the mediation conference, and if served by mail, the required two court day period is increased in accordance with Code of Civil Procedure section 1005.

4. Documents Requested by the Mediator. The mediator may request the parties submit additional documents for consideration. Copies of the documents must be provided to the other party concurrently with the submission to the mediator.

E. Attendance at Mediation. Unless otherwise stipulated, only the parties and statutorily authorized support persons may attend the mediation. The attorneys do not participate in the mediation. If the mediator wants to interview the children or other person(s), the mediator will arrange for such interviews.

F. Agreements Reached in Mediation. If the parties reach an agreement during mediation, the mediator will prepare a report setting forth the terms of the agreement. If the mediation was non-confidential, either party or the mediator may file the report with the court.

G. Unresolved Issues in Mediation.

1. Confidential Private Mediation. If the parties are unable to resolve issues of custody or visitation through private mediation and the parties stipulated to participate in confidential private mediation, the parties must participate in non-confidential private mediation or schedule and participate in FCS mediation before the matter is heard by the court.

2. Non-confidential Private Mediation. If the parties are unable to resolve issues of custody or visitation through non-confidential private mediation, the mediator will submit a written report with a recommendation and reasons for the recommendation to the parties, their attorneys and the court before the custody hearing. If the report is not available at least 10 calendar days before the hearing, the court may grant a continuance upon request of a party. The written recommendation and report of the mediator will be admitted without further foundation.

H. Cross-Examination of the Mediator. A party has the right to cross-examine the mediator at trial or special set hearing. Either party may call the mediator, upon reasonable notice, to examine the mediator on the report and/or the recommendations at the special set hearing/trial.

I. Communication with the Mediator. Communications between mediators, parties, and attorneys, including minors' counsel, shall be governed by the provisions of Family Code sections 216 and 1818.
(Adopted 1/1/2008)

Rule 5.10.4

Custody Evaluations

A custody evaluation is a process by which a mental health professional uses appropriate professional techniques to gather information to formulate a custody/visitation recommendation that is submitted to the court pursuant to California Rules of Court, rule 5.220.

A. Initiating the Evaluation.

1. The court on its own motion or upon the request of either party may order an evaluation.

2. The parties may stipulate that the issues of custody and visitation be referred for an evaluation prior to or in addition to other recommendations made by FCS.

3. An evaluation may be recommended by FCS following mediation.

B. Scope of the Evaluation.

1. A formal order must be prepared that specifies: the appointment of the evaluator under Evidence Code section 730, Family Code section 3110, or Code of Civil Procedure 2032; the purpose and scope of the evaluation; the referring issues or questions; the evaluator; and such other matters as the court deems appropriate. Conformed copies of the order must be provided to the evaluator and all parties/attorneys.

2. Nothing herein may be construed to prevent the evaluator from contacting all attorneys and/or parties when it appears to the evaluator that new and/or additional information is being provided which causes the evaluator to recommend additional issues for evaluation.

C. Evaluator Qualifications; Selection of Evaluator; Request for Change of Evaluator; Withdrawal by an Evaluator.

1. Qualifications. Evaluators must meet the qualifications, training and continuing education requirements of Family Code sections 1815, 1816, and 3111 and California Rules of Court, rule 5.220(g), and will be required to acknowledge that they are so qualified and trained. Evaluators appointed pursuant to Evidence Code section 730 (Appointment of Expert by Court) under this rule are protected under Civil Code section 47 (Privileged Publications or Broadcasts) acting in the proper discharge of their official duty as appointed by this court for communications made and will be granted immunity from prosecution so long as the evaluator is acting within the judicial proceedings, for the appointment, or in any other official proceedings authorized by the court or law to achieve the objects of the litigation and in connection with or in a manner logically related to the litigation and the underlying action.

2. Selection. The parties may stipulate to the selection of an evaluator subject to the evaluator being approved by the court, or the court may appoint an evaluator.

3. Requests for Change. Requests for a change of evaluator must be made as soon as practicable and based upon good cause. The court will consider the basis and timeliness of the request upon an ex parte application.

4. Evaluators may petition the court to withdraw from a case, for good cause, in a writing directed to the judicial officer to whom the case has been assigned with copies to parties/attorneys. The evaluator need not be present at the hearing unless directed by the court. Any complaints regarding the evaluator will be directed to the appropriate licensing/regulatory board.

D. Writings and Other Materials for the Evaluator's Review. If either party/attorney wishes to submit writings or other materials to an evaluator for consideration during evaluation, he or she must submit the information to the evaluator with a cover letter describing or itemizing the materials provided. The cover letter must clearly state that the information has also been sent to the opposing party/attorney using the same method of delivery as was used for the evaluator (i.e. mail/hand delivery/fax, etc). The evaluator will not review the writings and other materials unless it has been sent to the opposing party/attorney. If the writings and other materials is a tape recording, video cassette, movie film, personal diary, or journal of the other party, that material must be delivered to the opposing party/attorney at least seven calendar days before submitting the item to the evaluator. If the material is an audio recording, it must be accompanied by a written transcript of the recording. The evaluator must immediately return any submitted writings and other materials that were not sent to the opposing party/attorney in accordance with this section.

E. Report of the Evaluator. The evaluator's report and recommendation will be released simultaneously to the parties/attorneys. The evaluator's report and recommendation will be filed with the court and admitted without further foundation. Either party may call the evaluator, upon reasonable notice, to examine the evaluator on the report and/or the recommendations at the hearing/trial.

F. Communication with the Evaluator. Communications between evaluators, parties, and/or attorneys, including minors' counsel, is governed by Family Code sections 216 and 1818.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008)

Rule 5.10.5

Confidentiality of Reports and Recommendations

A. Court Files.

1. All custody evaluator's reports and recommendations and other mental health professional's reports submitted to the court are confidential and will be placed in the confidential section of the court file. These reports and recommendations are available only to the court or persons to whom the court expressly grants access by written order made with prior notice to all parties.

2. All FCS and private mediation reports and recommendations submitted to the court are confidential and will be placed in the confidential section of the court file. These reports and recommendations are available only to the court, the parties, their attorneys, FCS, the court facilitators, and persons to whom the court expressly grants access by written order made with prior notice to all parties.

B. Confidentiality of Reports. Reports usually contain very sensitive information and must not be used to cause unnecessary embarrassment or harm to the parties and must be handled in a responsible, confidential manner for purposes limited to the custody proceeding.

1. Custody Evaluation Reports. Absent a court order to the contrary, minors must not have access to the evaluation report. Anyone receiving the evaluator's report must not give copies, or parts, of the report to anyone who is not assisting in the preparation of the case.

2. FCS/Private Mediation Reports. Minors must not have access to the report. The report must not be given to anyone who is not participating in the custody proceeding. Reports may be provided to the individual therapist of a party or child to assist in the therapy.

(Adopted 1/1/2008)

Rule 5.10.6

Visitation Monitors

A. Purpose. The purpose of a visitation monitor is to provide a safe and nurturing environment for children, during a parent's visitation, where there is need for reunification, alleged/adjudicated emotional, physical or sexual abuse of the child by a parent, or threat of abduction.

B. Visitation Monitor List. A list of visitation monitors is available through the San Diego Superior Court - Programs Resource List (PRL). The individuals/entities have identified themselves to the San Diego Superior Court as visitation monitors. The visitation monitors are not affiliated with the court, and each visitation monitor is independently responsible for compliance with any and all applicable legal requirements. The court does not endorse, evaluate, supervise, or monitor the visitation monitors.

C. Visitation Monitor Requirements. Providers of supervised visitation, whether the provider is a friend, relative, paid independent contractor, employee, intern, or volunteer operating independently or through a supervised visitation center or agency are required to follow the legal requirements and obligations set forth in California Rules of Court, Judicial Administrative Standard 5.20. Informational materials about the role of a provider, the terms and conditions of supervised visitation, and the legal responsibilities and obligations of a provider are available at all FCS locations.

D. Non-Professional Visitation Monitors. A non-professional visitation monitor is defined as any person who is not paid for providing supervised visitation services. Prior to supervising any visitation, the non-professional visitation monitor must complete and file with the court a Non-Professional Visitation Monitor Declaration available on the court's website at www.sdcourt.ca.gov under the "Family Law" forms.

E. Grievance Against PRL Visitation Monitor. A party/attorney may file a grievance against the visitation monitor. The grievance must be submitted in writing to the Supervising Judge of the Family Court. The

Supervising Judge will forward the grievance to the Presiding Judge of the San Diego Superior Court or his or her designee for review.

F. Removal From PRL Visitation Monitor List. Removal from the PRL list may be made without cause, notice, or explanation. If practical, written notification of removal will be provided.
(Adopted 1/1/2008; Rev. 1/1/2009)

CHAPTER 11
JUDGMENTS AND ORDERS

Rule 5.11.1

Default or Stipulated Judgments

A. Dissolution or Legal Separation. A dissolution or legal separation may proceed by way of default or stipulation. The judgment of dissolution or legal separation is obtained by testimony at a default prove-up or uncontested hearing or by stipulation and/or affidavit pursuant to Family Code section 2336.

1. To obtain entry of default for a judgment of dissolution or legal separation, the Petitioner must complete and file a proof of service of preliminary declaration of disclosure (Declaration Regarding Service of Declaration of Disclosure, Form FL –141) and a Request to Enter Default (Form FL-165) with a stamped envelope bearing sufficient postage addressed to the defaulting party with the address of the court clerk as the return address. After default is entered, the Petitioner may apply to the court for the relief sought in the Petition by filing an original and two copies of a judgment packet. A judgment packet must contain the following documents: Declaration for Default or Uncontested Dissolution or Legal Separation (Form FL-170), current Income and Expense Declaration (Form FL-150), which should be on green paper, if support is at issue, Judgment (Family Law) (Form FL-180), which should be on pink paper, with or without a written agreement signed by both parties and Notice of Entry of Judgment (Form FL-190) with stamped envelopes addressed to each party with the court's address as the return address. If a default judgment is submitted without a written agreement signed by both parties, the court may set a default hearing and notify Petitioner of the day and time.

2. If the proposed default judgment is not by way of agreement or a stipulated judgment and includes division of property, a fully completed current Property Declaration (Form FL-160) including values must be filed. The court cannot divide any assets or debts that are not listed on the Petition or Property Declaration filed with the court and served on Respondent.

3. If the proposed default judgment is not by way of agreement or a stipulated judgment and includes provisions for child support, spousal support or a waiver thereof or attorney's fees or costs, the moving party must also file a current Income and Expense Declaration (Form FL-150), which should be on green paper. Neither child nor spousal support will be granted unless the moving party sets forth an estimate of the other party's income in the Income and Expense Declaration. If the moving party does not know the other party's present income, this requirement may be met by evidence of the other party's ability to earn, work history or other relevant facts.

4. Default prove up hearings must be set within 45 days of submission of the proposed judgment.

5. Stipulated Judgments. Stipulated judgments and agreements attached to judgments must contain the following waivers: 1) the matter may proceed on the default or uncontested calendar before a temporary judge; and 2) the parties waive their rights to notice of trial, a statement of decision, to move for a new trial and to appeal. If both parties have appeared and submit a judgment with attached written settlement agreement signed by both parties, or if a default judgment is submitted with a written settlement agreement signed by both parties, the judgment packet must also include Declarations Regarding Service of Declaration of Disclosure (Form FL-141) regarding the Preliminary Declaration of Disclosure (Form FL-140) from each party unless previously filed or included in the original proof of service. If the parties did not exchange Final Declarations of Disclosure (Form FL-140), a Stipulation and Waiver of Final Declaration of Disclosure (Form FL-144) or a separate stipulation signed by each party must be included. A waiver included in a marital settlement agreement or stipulated judgment is not sufficient. If a Response (Form FL-120) has not been filed, Respondent's signature on the written settlement agreement or stipulated judgment must be notarized (Fam. Code, § 2338.5, subd. (a)).

6. If the default or stipulated judgment does not include orders involving custody, visitation, support, or division of community property, the court will be deemed to have retained jurisdiction over these issues.

B. Nullity

1. A Nullity Judgment may proceed by way of default. Because findings must be made by the court regarding a nullity, nullity judgments may not be entered by way of stipulation.

2. Requests for a judgment in a nullity action must be accompanied by a declaration setting forth facts which support the request. If there is even minimal doubt that the nullity will be granted, Petitioner can set forth in the original petition a request for a nullity or, in the alternative, a dissolution. If Petitioner requests nullity or dissolution in the alternative, then all of the requirements for both a judgment of nullity and a judgment of dissolution apply as set forth above.

3. If Petitioner requests a default judgment of nullity, then Petitioner must file a Request to Enter Default (Form FL-165) and a stamped envelope bearing sufficient postage addressed to the defaulting party with the address of the court clerk as the return address. After default is entered, Petitioner may apply to the court for the relief sought in the Petition by filing an original and two copies of a judgment packet. A judgment packet must contain the following documents: Judgment (Family Law Form FL-180), which should be on pink paper, and

Notice of Entry of Judgment (Form FL-190) with stamped envelopes addressed to each party with the court's address as the return address. The court will set a prove up hearing and notify Petitioner of the day and time.

4. If a Response has been filed, the Petitioner may request a judgment and prove up hearing, by filing a judgment packet as set forth above. The court will set a hearing and both parties will receive notice.

C. Paternity. A judgment in a paternity action may proceed by way of default or stipulation. The judgment is obtained by testimony at a default prove-up, or by submission of a Stipulation For Entry of Judgment Re: Parental Relationship (Form FL-240) and/or Judgment (Uniform Parentage) (Form FL-250) with or without an attached written agreement signed by both parties.

1. Default Judgment. To obtain a default judgment in a paternity action, Petitioner must complete and file a Request to Enter Default (Form FL-165) with a stamped envelope bearing sufficient postage addressed to the defaulting party with the address of the court clerk as the return address. After default is entered, the Petitioner may apply to the court for the relief sought in Petition by filing an original and two copies of a judgment packet. A judgment packet must contain the following documents: Declaration for Default or Uncontested Judgment (Uniform Parentage, Custody and Support (Form FL-230), Advisement and Waiver of Rights Re: Establishment of Parental Relationship (Form FL-235), current Income and Expense Declaration (Form FL-150) if child support is at issue, Judgment (Uniform Parentage – Custody and Support) (Form FL-250), which should be on pink paper, with attached Child Support Attachment to Judgment (Form FL-341) if child support is at issue, Child Custody and Visitation Schedule (Form FL-342) if custody and/or visitation is at issue, and Notice of Entry of Judgment (Form FL-190) with stamped envelopes addressed to each party with the court's address as the return address. If a default judgment is submitted without a written agreement/stipulated judgment, the court will set a default prove up hearing and notify Petitioner of the day and time.

2. If the proposed default judgment includes provisions for child support or attorney fees or costs, the moving party must also file a current Income and Expense Declaration (Form FL-150), which should be on green paper. Child support will not be granted unless the moving party sets forth an estimate of the other party's income in the Income and Expense Declaration. If the moving party does not know the other party's present income, this requirement may be met by evidence of the other party's ability to earn, work history, or other relevant facts.

3. Default prove up hearings must be set within 45 days of submission of the proposed judgment.

4. Stipulated Judgments. Stipulated judgments and agreements attached to judgments must contain the following waivers: 1) the matter may proceed on the default or uncontested calendar before a temporary judge; and 2) the parties waive their rights to notice of trial, a statement of decision, to move for a new trial and to appeal. If both parties have appeared and submit a signed Stipulation for Entry of Judgment or a Judgment with an attached written settlement agreement signed by both parties, the judgment package must also include Declaration for Default or Uncontested Judgment (Uniform Parentage) (Form FL-230), Stipulation for Entry of Judgment Re: Establishment of Parental Relationship (Form FL-240) with an Advisement and Waiver of Rights Re: Establishment of Parental Relationship (Form FL-235) from each party, Judgment (Uniform Parentage) (Form FL-250), which should be on pink paper, with or without a written agreement signed by both parties, Notice of Entry of Judgment (Form FL-190) with stamped envelopes addressed to each party with the court's address as the return address. If there is no written agreement attached to the judgment, the parties must attach to the judgment a Child Custody and Visitation Order Attachment (Form FL-341) and/or a Child Support Information Order and Attachment (Form FL-342) if custody/visitation and/or child support are at issue. If a Response to Petition to Establish Parental Relationship (Form FL-220) has not been filed, the Respondent's signature on the Stipulation or the written agreement attached to the judgment must be notarized (Fam. Code, § 2338.5, subd. (a)).

D. Stipulated Judgments Which Include Child Support and/or Custody.

1. Stipulated judgments and agreements attached to judgments must contain the following waivers: 1) the matter may proceed on the default or uncontested calendar before a temporary judge; and 2) the parties waive their rights to notice of trial, a statement of decision, to move for a new trial and to appeal.

2. Stipulated judgments which contain orders regarding child support must include the following Child Support Acknowledgments:

a. Each party is fully informed of their rights concerning child support;

b. The order is being agreed to without coercion or duress;

c. The agreement is in the best interests of the child involved;

d. The needs of the child will be adequately met by the stipulated amount of support; and

e. The right to support has not been assigned to the county pursuant to section 11477 of the Welfare and Institutions Code and no public assistance application is pending.

3. Stipulated judgments which contain orders regarding child custody and/or visitation must include the following:

a. The basis for the court's exercise of jurisdiction;

b. The manner in which notice and opportunity to be heard were given;

c. A clear description of the custody and visitation rights of each party;

d. A provision stating that a violation of the order may subject the party in violation to civil and criminal penalties, or both; and

e. Identification of the country of habitual residence of the child or children.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.11.2

Preparation of Orders and Judgments

A. Findings and Orders After Hearing.

1. Counsel for the moving party must prepare a formal order unless the court orders opposing counsel to do so. (The party preparing the original proposed order is referred to in this Rule as the "preparing party.") If neither party is represented by counsel, the court may request that the Family Law Facilitator's Office prepare the order and submit it directly to the court. Findings and Orders After Hearing should be prepared on brown paper. The order must be prepared so that at least two lines of text appear on the page which will have the judge's signature, and no text may appear after the judge's signature. The Agreement or Recommendation portion of a FCS Report may be attached as an exhibit to an order when the court has adopted the listed provisions as its order. No other portion of the FCS report shall be attached to the order.

2. The order must be prepared and submitted to the other party (referred to in this rule as the "responding party") within five calendar days of the hearing. The preparing party must forward it to the responding party for approval as to form and content unless the court authorized the preparer to submit it directly to the court. The responding party has 10 calendar days from the date the proposed order or judgment was mailed to review the order and either sign it as prepared or notify the preparing party in writing of objections to its content.

3. If the responding party fails to timely approve or object to the order, the preparing party must send a second letter to the responding party stating that the proposed order will be submitted to the court for signature if no written response to the order is received within five calendar days of the second letter. If there is no written response to the second letter, the preparing party must submit the following to the court clerk: (1) the proposed order; (2) copies of both letters to the responding party; and, (3) a declaration explaining the circumstances and requesting that the proposed order be signed by the judicial officer.

4. If the responding party timely objects to the proposed order and the parties cannot thereafter agree on the language of the order, the court will be guided by the transcript of the hearing. Within 10 calendar days of receiving written objections to the proposed order, the preparing party must request and advance the cost for a transcript. Each party must be responsible for one-half of the cost of the transcript. Upon receipt, a copy of the transcript and a copy of the bill must be immediately provided to the responding party. No later than 25 calendar days after delivery of the copy of the transcript to the responding party regardless of whether the copy is delivered personally or by mail, the parties must exchange new proposed orders based on the transcript. If the parties still cannot agree on the language of the order, then no later than 45 calendar days after delivery of the copy of the transcript to the responding party, the preparing party must submit the following to the judicial officer who made the ruling: (1) both parties' final proposed orders; (2) a copy of the transcript; (3) all written objections from all parties; and (4) a clear explanation as to how the final proposed orders differ. Copies of all papers submitted to the court must be immediately served on the responding party. The proposed order accepted by the judicial officer will be executed and filed. Failure to comply with this rule may subject a party or the attorney to sanctions.

B. Judgments.

1. Counsel may stipulate as to who will prepare the judgment, or the court will order one of the parties to do so. The judgment should be prepared on pink paper. Local Rule 5.11.2.A.1 will also apply to judgments.

2. The judgment must be prepared and submitted to the other party within 30 calendar days of the trial. The preparing party must forward it to the responding party for approval as to form and content unless the court authorized the preparer to submit it directly to the court. The responding party has 30 calendar days from the date the proposed judgment was mailed to review the judgment and either sign it as prepared or notify the preparing party in writing of objections to its content.

If the responding party cannot agree to the language of the judgment, the preparing party must request and advance the cost for a transcript. Each party must be responsible for one-half of the cost of the transcript. Upon receipt, a copy of the transcript and a copy of the bill must be immediately provided to the responding party. The parties must then meet and confer regarding finalizing the judgment. If they cannot agree, they must submit the proposed judgment to the court in accordance with Local Rule 5.11.2A.3. If the judgment arose as the result of a settlement placed on the record before the court, and the parties cannot agree on the language of the judgment, either party may file a motion under Code of Civil Procedure section 664.6.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.11.3

Mandatory Child Support Case Forms

A. Pursuant to Family Code section 4014, a Child Support Case Registry Form (FL-191) must be included with all child support orders issued or modified.

B. Pursuant to Family Code sections 4062 and 4063 a Notice of Rights and Responsibilities (Form FL-192) must be attached to all orders and judgments which include provisions for child support.

(Adopted 1/1/2008)

CHAPTER 12
MISCELLANEOUS

Rule 5.12.1

Child Support

A. Amount of Support. In any proceeding in which a party seeks to establish or modify child support, whether temporary or permanent, based on State or Federal Law, the amount will be determined pursuant to Family Code sections 4050 et seq.

B. Presumptions Used to Calculate Support Pursuant to Family Code section 4059, subdivision (a), the following rebuttable presumptions will be applied to determine the appropriate income tax filing status and number of withholding exemptions for a party. These presumptions may be rebutted by any relevant factors (such as the fact that the parties are likely to file joint returns for the current tax year) and any material generated by computer programs certified by the Judicial Council:

1. Single Status will be presumed if the party has less than 50 percent time share with the child of the relationship before the court and does not have any additional dependents. In such an event, the court will presume there is one exemption for tax withholding purposes.

2. Head of Household Status will be presumed if the party has not remarried and has greater than 50 percent time share with a child of the relationship before the court or has another dependent that qualifies the party for Head of Household status. The number of exemptions for tax withholding purposes will be one plus the number of other dependents the party is entitled to claim for income tax purposes.

3. Married Status will be presumed if the party is married to someone other than the other party. The total number of exemptions assigned for tax withholding purposes will be that to which the party is entitled for income tax purposes.

4. The court will apply the "standard deductions" unless sufficient evidence is presented to allow the court to determine appropriate itemized deductions.

5. Time sharing percentages will be calculated by assigning each parent the number of hours that the child is scheduled to be with that parent or to be under the care, custody or control of that parent. Unless rebutted by competent evidence, it will be assumed that the hours credited to a parent who is not the primary caretaker begin at the time the child is transferred to his or her care and do not extend beyond the end of his or her custodial or visitation time when the child is returned to the other parent or to the child's school or day care provider. "Primary caretaker" refers to the parent who has custody of the child the majority of the time.

C. Income and Expense Declarations. In any proceeding in which a party is seeking child support, both parties must comply with Local Rule 5.6.2 regarding the filing of current Income and Expense Declarations.

D. Stipulations

1. Mandatory Language. In order to be accepted by the Court, any written stipulation for the payment of child support must include the following language: "The parties declare all of the following:

a. They are fully informed of their rights concerning child support;

b. The order is being agreed to without coercion or duress;

c. The agreement is in the best interests of the children involved;

d. The needs of the children will be adequately met by the stipulated amount; and

e. The right to support has not been assigned to any county pursuant to section 11477 of the Welfare and Institutions Code and/or Family Code section 17404, and no public assistance application is pending."

2. Issuance of Wage Assignment Order. Absent a written waiver, a written stipulation for the payment of child support must include the following or similar language: "A wage assignment order will be issued for the payment of support ordered pursuant to this agreement."

3. Stay of Service of Wage Assignment Order. The stipulation may provide for the stay of service of the wage assignment order by including the following or similar language: Pursuant to Family Code section 5260 et seq., the parties agree that they are specifically providing for an alternative arrangement for the payment of the support obligation set forth in this agreement that is acceptable to both parties. The parties further agree to stay the service of the wage assignment order until the stay is terminated pursuant to Family Code section 5261."

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.12.2

Spousal Support Guideline

San Diego County has declined to adopt any specific spousal support guideline. The Court will consider all relevant factors in setting temporary spousal support including guideline calculations based upon any formulae adopted in other counties of this state.

(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 5.12.3

Attorneys Seeking to be Relieved as Attorney of Record

Absent a properly executed substitution of attorney form, attorneys will not be relieved as attorney of record unless a properly served notice of motion or OSC (using the applicable Judicial Council form) is before the court. Counsel must comply with California Rules of Court, rule 3.1362. The entry of a status-only judgment may not be a basis for withdrawal pursuant to Code of Civil Procedure section 285.1.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.12.4

Bifurcation of Marital Status

A request to bifurcate the trial of the marital status from the remaining issues in the case will ordinarily be granted, and the requesting party will be permitted to present jurisdictional testimony to obtain a judgment of dissolution (status only). The motion to bifurcate must have attached a completed Judicial Council Form FL-315. The court order must comply with Family Code section 2337.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.12.5

Writs of Execution

Writs of execution on judgments or orders in a fixed amount, or based on judgments or orders providing for installment payments, do not require a judicial officer's signature or notice to the opposing party before presentation to the records division of the clerk's office for approval and issuance.

A supporting declaration must be submitted to the clerk. The declaration must allege, under penalty of perjury, the date and amount of the judgment or order, the date and amount of any payments thereon and the current, unpaid balance. For writs based on installment judgments or orders, the declaration must clearly set forth in columns the date and amount of each payment as it came due, the date and amount of any payments received and a running total of the amount owing. The supporting declaration for either type of judgment or order must also state that no other writ on this judgment or order is outstanding in the same county and that the arrearages have accrued within the past 10 years, unless the arrearages relate to child support, spousal support or family support in which case Family Code section 4502 will govern.

The writ may include the fee paid for issuance of the writ. If attorneys' fees are requested, a hearing is required, and a current Income and Expense Declaration must be filed with the application. If the moving party is requesting interest on the arrearages or costs not awarded in the original order, a declaration setting forth the calculation of the amount of interest on the arrearages or a cost bill must be filed.
(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 5.12.6

Elisors

Where one of the parties fails to execute a document necessary to carry out a court order, the Clerk of the Superior Court or the Clerk's authorized representative or designee may be appointed as an elisor to sign the document. An application for appointment of an elisor may be made ex parte. When applying for the appointment of an elisor, the application and proposed order must designate "The Clerk of the Court or the Clerk's Designee" as the elisor. The application must not set forth a specific court employee. The declaration supporting the application must include specific facts establishing the necessity for the appointment of an elisor.

If the Court grants the application for appointment of an elisor, the applicant must contact the business office to make an appointment for the actual signing of the document(s) to ensure the availability of an authorized elisor. If the elisor is signing documents requiring notarization, the applicant must arrange for a notary to be present when the elisor signs the document(s).
(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 5.12.7

Appointment of Counsel for Children

Pursuant to Family Code section 3150, subdivision (a), counsel may be appointed to represent the best interests of the children who are the subject of a custody or visitation dispute ("minor's counsel").

A. Persons Who May Request the Appointment. The persons who may request the appointment of minor's counsel are specified in California Rules of Court, rule 5.240(b). The court may also appoint minor's counsel on its own motion.

B. Guidelines for Appointment. When appointing minor's counsel, the court will be guided by the considerations for appointment set forth in California Rules of Court, rule 5.240(a).

C. Qualifications for Appointment. The qualifications to serve as minor's counsel are as set forth in California Rules of Court, rule 5.242. Before beginning work on the case and no later than 10 days after being appointed, minor's counsel shall file Judicial Council Form FL-322 (Declaration of Counsel for a Child Regarding Qualifications), to establish that the qualifications to serve as minor's counsel have been met.

D. Duties of the Parties Upon Appointment of Minors Counsel. Upon the appointment of minors counsel, the parties must provide minors counsel with copies of all substantive pleadings, declarations and exhibits filed or lodged in the case, the name, address and telephone number of each professional who has provided services to the children, and a list of the contentions of the parties bearing on custody and visitation. The court will order the parties to provide the information and sign releases to permit all professionals who are or have been involved with the parties and/or the child to provide information as requested by minors counsel.

E. Rights and Responsibilities of Appointed Minors Counsel. Upon appointment, minors counsel will be vested with all rights and duties set forth in Family Code sections 3151, 3151.5 and 3152, and California Rules of Court, rule 5.242.

1. Once counsel for a child has been appointed, he or she must be given notice of all future proceedings and the child must be treated as a party to the action. Accordingly, all written communications and documents regarding child custody/visitation and related issues must be copied to the other attorney and the child's counsel. The child's counsel must participate in any proceeding in which custody, visitation or related matters are at issue. The child's counsel may participate in other proceedings if counsel believes the child's best interests would be served by such participation.

2. Requests by minors counsel for the appointment of experts and/or investigators must be made in writing to the Supervising Family Judge prospectively. Requests will be determined on a case-by-case basis, including a determination of reasonable fees to be incurred. Requests for fees for experts and/or investigators retained without prior court approval will be denied.

F. SDSC Form D-137 (Declaration and Order for Payment of Fees and Costs). Minors counsel must file D-137 with the court quarterly, regardless of whether there has been any billing and/or case activity during the quarterly cycle. The form must be filed within two weeks after the end of each quarter. Fees incurred must be billed at 0.1 hour increments; bills with a minimum increment of .25 hour will not be processed.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.12.8

Appraisal of Closely Held Business Interests

A. Standard of Value for Business Appraisal. Businesses are appraised in Family Law proceedings to establish the value of the interest to the spouse who is awarded the business.

B. Procedure to be Followed in Appraisal Process. Unless the parties agree via written stipulation to appoint and compensate a joint appraiser, the identification of appraisers for each side will be subject to Code of Civil Procedure section 2034 et seq. The parties will notify the court at the initial CMC of the need to set dates for the identification of expert trial witnesses, including appraisers.

C. Appraisal Reporting Requirements. The appraisal must state the specific reasons that would justify the use of the appraisal method(s) chosen. The appraisal must state the risk and other factors specific to this business that were considered in selecting the capitalization rate and the nature of the impact each factor had on this rate. The appraiser must state the factors considered in arriving at any reasonable compensation estimate used in the appraisal, including compensation studies or other reference materials. The appraisal must state the factors considered in making any other adjustments, assumptions or estimates made in the appraisal process.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.12.9

Discretionary Dismissal

Pursuant to Code of Civil Procedure section 583.410 and California Rules of Court, rule 3.1340, cases which a judgment has not been filed or which have not been brought to trial within three years after the action was commenced may be set for a hearing to dismiss the case. The filing of a judgment or a dismissal will vacate the hearing. If the Petitioner/Plaintiff does not appear at the hearing the case will be dismissed without prejudice, subject to the court's reservation of jurisdiction to set aside the dismissal nunc pro tunc. Cases involving DCSS will be reinstated administratively once service has been obtained.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.12.10

Family Law Facilitator's Duties

The services provided by the Family Law Facilitator are pursuant to Family Code sections 10004 and 10005.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.12.11

Communication Between Court Divisions

The court will develop procedures to facilitate communication between divisions regarding information involving child custody and visitation orders and criminal court protective orders pursuant to California Rules of Court, rule 5.450.
(Adopted 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2008)

Rule 5.12.12

Appointment of Counsel Under Service Members Civil Relief Act

If the Respondent or responding party is in the military service, the Service Members Civil Relief Act (the "Act") may apply. (50 U.S.C. Appen. § 501 et seq.)

A. If the service member has not made an appearance.

1. The court may not enter a default judgment until the court appoints an attorney to represent the Respondent. If the appointed attorney cannot locate the service member, the actions taken by the attorney will not bind the service member or waive any defenses.

2. The court must grant a minimum 90-day stay of the proceedings if there may be a defense to the proceeding which cannot be presented without the presence of the service member, or if after due diligence, appointed counsel has been unable to contact the service member to determine if there is a meritorious defense.

B. If the service member has received notice of the proceeding.

1. The Court must grant a minimum 90-day stay of the proceedings if the service member communicates that military duty requirements materially affect the service member's ability to appear, stating a date when the service member will be available, and if the service member's commanding officer communicates that the service member's current military duties prevent an appearance and leave is not authorized at the time of the hearing.

2. The service member may apply for an additional stay in the same manner as the original request. If the court refuses to grant the additional stay, the court must appoint counsel to represent the service member in the proceeding.

C. Procedure.

1. Appointments of counsel under the Act are pro bono.

2. Any individual holding a power of attorney from the service member may appear in court on his or her behalf to request a stay or additional stay.

3. A request for a stay does not constitute a general appearance for jurisdictional purposes or a waiver of substantive or procedural defenses.

(Adopted 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2008, Rev. 1/1/2009)

DIVISION VI
JUVENILE

CHAPTER 1
JUVENILE RULES

Rule 6.1.1

Preliminary Provisions

A. These rules, together with the rules promulgated by the Judicial Council for the juvenile courts, the Welfare and Institutions Code, those sections of other codes specifically made applicable to juvenile proceedings by the Welfare and Institutions Code, and relevant case law, are the controlling body of law which governs proceedings in the San Diego Superior Court Juvenile Division.

B. Insofar as these rules are substantially the same as existing statutory provisions relating to the same subject matter, they are to be construed as restatements thereof.

Insofar as these rules may add to existing statutory provisions relating to the same subject matter, they are to be construed so as to implement the purposes of the juvenile court law.

C. To the extent that these rules may affect or declare substantive rights, these rules are intended to be a reflection of existing constitutional, statutory, case law, and Judicial Council rules of court, and are to be interpreted consistent with such law.

D. These rules are intended to be applied in a fair and equitable manner consistent with the best interest of the children and families appearing before the juvenile court.

E. Severability clause. If a rule or subdivision thereof in this division is invalid, all valid parts that are severable from the invalid part remain in effect. If a rule or subdivision thereof in this division is invalid in one or more of its applications, the rule or subdivision thereof remains in effect in all valid applications that are severable from the invalid applications.

F. These rules have prospective application only.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006)

Rule 6.1.2

Definitions, Construction of Terms, Nature of Hearings

A. As used in these rules, unless the context or subject matter otherwise requires:

1. "CASA" means a court-appointed special advocate;

2. "Child" means a person under the age of 18 years;

3. "Clerk" means the clerk of the juvenile court;

4. "Court" means the juvenile court, and includes any judge, commissioner, referee, or referee pro tem of the juvenile court;

5. "CRC" means California Rules of Court;

6. "Foster Parent" means an adult relative or non-relative with whom a dependent child is placed;

7. "Guardian" means the legal guardian of the child;

8. "HHSA" means the Health and Human Services Agency of San Diego County (formerly called "Department of Social Services, Children's Services Bureau");

9. "Notify" means to inform, either orally or in writing;

10. "Petitioner" means the San Diego County Health and Human Services Agency ("HHSA") or its employees.

11. "WIC" refers to the California Welfare and Institutions Code.

B. Construction of terms

1. "Shall" or "must" is mandatory; "may" is permissive.

2. The past, present, and future tense includes the others.

3. The singular and plural numbers include the other.

C. Nature of Hearings

1. A jurisdictional settlement conference is a jurisdiction hearing on the uncontested calendar.

2. A contested jurisdiction hearing is a trial where testimonial and documentary evidence may be submitted on the issue of jurisdiction.

(Adopted 1/1/1990; Rev. 1/1/1997; Rev. 1/1/2002; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 6.1.3

Standing, Rights and Levels of Participation in Dependency Cases

Unless otherwise expressly granted by constitutional, statutory, or case law, or rule of court, the standing, rights, and levels of participation of the following persons in dependency cases are limited to those provided in this rule.

A. Parents and/or guardian(s). The biological parents, adoptive parents, guardian(s), and/or person(s) having legal custody of a child who is the subject of a dependency action have standing as parties to the proceedings.

B. Child. The child who is the subject of a dependency action has standing as a party to the proceedings.

C. De facto parent. For purposes of this rule, a de facto parent is a person who has been found by the court to have assumed, on a day-to-day basis, the role of a parent to the child, fulfilling both the child's physical and psychological needs for care and affection, and who has assumed that role for a substantial period of time. No person will be granted de facto parent status who has inflicted or allowed to be inflicted serious harm on the child, including but not limited to physical, sexual, or emotional harm.

De facto parent status will be granted by the court only upon a written application. Notice of such application and hearing date will be given to the parties or their counsel of record by the court clerk. At the hearing on such application, the court will consider the contents of the dependency file, any report filed by the social worker or the CASA for the child, and any other relevant and admissible evidence presented by the parties. The court may consider the declarations filed in support of or in opposition to such application if the declarants are made available for cross-examination. Before granting de facto parent status, the court must find, by a preponderance of the evidence, that the moving party meets the criteria set forth in this rule. An application for de facto parent status will not, in and of itself, constitute good cause for continuing any other hearing in the dependency action.

The de facto parent of a child who is the subject of a dependency action has standing as a party to the proceedings to the degree that the proceedings directly affect the de facto parent's legally recognizable interest in the child.

A de facto parent's right to discovery in the dependency proceeding is pursuant to Welfare & Institutions Code section 827. Upon granting de facto parent status, the court may make such discovery orders pursuant to that section as are necessary and appropriate.

Upon granting de facto parent status, the court may appoint counsel on a pro bono basis for the de facto parent. No right to the appointment of counsel exists for the bringing of this application.

In any case in which a child is removed from the physical custody of his or her parents or legal guardians pursuant to Welfare & Institutions Code section 361, a de facto parent, if a relative or licensed foster care provider, will also receive preferential consideration for placement of the child over all other relatives and foster parents if such placement is in the best interest of the child and is conducive to any reunification efforts ordered by the court.

De facto parent status will continue only so long as the psychological bond continues to exist between the de facto parent and the child. De facto parent status automatically terminates upon the termination of dependency jurisdiction.

D. Relative. For purposes of this rule, a “relative” means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great" or "grand" or the spouse of any of these persons even if the marriage was terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for the placement of the child: an adult who is a grandparent, aunt, uncle, or sibling.

A relative whose presence is known to the court will receive notice of juvenile court proceedings as otherwise provided by law, and may be present at such proceedings if the court finds that his or her presence would not disrupt the orderly court process and would be consistent with the best interests of the child.

Participation in the court process for relatives is limited to the submission of a written or oral statement regarding their interest in the child, any information they might have that relates to the child or the dependency action, and their recommendation regarding the child. The court may not consider such unsworn statements as evidence, but may consider such statements as a basis for ordering further investigation or services.

At the detention and disposition hearings, the home of a relative will be given preferential consideration for placement of the child, as provided in Welfare & Institutions Code section 361.3.

E. Foster parent. A foster parent of a child who is the subject of a dependency action will receive notice of proceedings as otherwise provided by law, and may be present at such proceedings if the court finds that such presence would not disrupt the orderly court process and would be consistent with the best interests of the child.

Participation in the court process for such foster parents is limited to the submission of a written or oral statement regarding their interest in the child, any information they might have that relates to the child or the dependency action, and their recommendation regarding the child. The court may not consider such unsworn statements as evidence, but may consider such statements as a basis for ordering further investigation or services.

(Adopted 1/1/1990; Rev. 1/1/1994; Rev. 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 6.1.4

Assignment of Cases and Peremptory Challenges

The court assigns dependency cases on an independent calendar system. Under that system, a dependency case assigned to a particular judge, commissioner, or referee will remain with that judicial officer until the termination of jurisdiction, unless otherwise ordered. Under the independent calendar system, a peremptory challenge to any judge, commissioner, or referee must be made pursuant to Code of Civil Procedure section 170.6. Such a challenge must be made prior to any determination of contested issues of fact relating to the merits and within 10 days after notice of the assignment of the case to a specific judge, commissioner, or referee, or it will be deemed untimely. Notice of the assignment is complete upon service of such notice or initial appearance in court. Each party will be allowed only one peremptory challenge per case. (This rule is adopted pursuant to *Daniel V. v. Superior Court* (2006) 139 Cal.App.4th 28.)

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 1/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 6.1.5

Objection to the Sufficiency of the Petition

A party may file an objection to challenge the sufficiency of a Welfare & Institutions Code section 300 petition on the ground that the petition alleges facts which, even if determined to be true, (a) are not sufficient to state a cause of action, or (b) are not stated with sufficient clarity and precision to enable the party to determine what must be defended against. (For purposes of this rule, "petition" includes amended petitions and subsequent petitions filed under Welf. & Inst. Code, § 342, 360, subd. (c), or 364.)

Such an objection may be made orally or in writing. However, it must be made at either: (a) the detention hearing or (b) the initial appearance after the filing of a petition but before the court makes a true finding. The court may entertain the objection by oral argument when made or may set it for further hearing.

If the court sets a hearing on the objection, counsel for the moving party may file a supporting memorandum of points and authorities. To be considered timely, the memorandum must be filed at least 48 hours before the hearing. Petitioner may file a responsive memorandum of points and authorities. To be considered timely, the responsive memorandum must be filed by 8:30 a.m. on the day of the hearing.

When an objection to the sufficiency of a petition is overruled and no plea has been filed, the court will allow the plea to be entered at the conclusion of the hearing or upon such terms as may be just.

When an objection to the sufficiency of a petition is sustained, the court may grant leave to amend the petition upon any terms as may be just and will fix the time within which the amended petition must be filed.
(Adopted 1/1/1990; Rev. 7/1/1991; Rev. 1/1/2002; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 6.1.6

Amendment of the Welfare & Institutions Code Section 300 Petition

A. Petitioner may amend the petition once without leave of court, either: (1) before a plea is entered or an objection is filed, or (2) after a denial is entered but before the trial on the issue of jurisdiction, by filing the amended petition and serving a copy on all parties at the jurisdictional settlement conference.

B. The court may, in furtherance of justice, and on such terms as may be proper, allow the petitioner to amend the petition or any allegation in the petition by adding or striking the name of any party or by correcting statistical information, clerical mistake(s), or typographical error(s). (Cal. Rules of Court, rule 5.560(f).)

C. The court may, upon noticed motion or upon stipulation of all parties, and in furtherance of justice, amend the petition.

D. The court may, upon a finding that the variance is not material, amend the petition to conform to the evidence received by the court at the jurisdiction hearing.

E. Except as otherwise provided by law, the court may not amend the petition over the objection of petitioner.
(Adopted 1/1/1990; Rev. 1/1/1997; Rev. 1/1/2002; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 6.1.7

Prehearing Discovery in Dependency Matter

A. Prehearing discovery will be conducted informally. Except as protected by statute, claim of privilege, or other good cause, all relevant material held by any party must be disclosed in a timely fashion to all parties to the litigation or made available to the parties upon request.

B. Only after all informal means have been exhausted may a party move the court for an order requiring disclosure.

The motion must identify with specificity the information sought, state the efforts which have been made to obtain the information through informal means, and explain why the information is relevant and material.

The original of the motion, with supporting declaration(s) and a memorandum of points and authorities, must be filed with the clerk of the assigned department. No motion will be accepted for filing or heard unless accompanied by a declaration by the movant or the movant's counsel, setting forth the following:

1. That the informal request for discovery was made at least five court days before the motion was filed;

2. The response, if any, to the informal request by the party to whom the request was directed or that party's counsel;

3. That the movant has met and conferred with the party to whom the request was directed or that party's counsel, or the facts showing that movant has attempted in good faith to meet and confer with the party to whom the request was directed or that party's counsel.

The clerk will assign a hearing date within 10 court days of the date the informal request was made, but not less than five days before the next hearing, whichever is sooner. Responsive pleadings must be filed and served at least two court days before the assigned hearing date.

C. Materials released by the HHSA pursuant to an informal request for discovery, or after a formal motion to compel discovery has been granted, will be subject to the following conditions unless the conditions are modified by a judicial officer:

1. All records and information obtained through discovery and any copies thereof are in the constructive possession and custody of the court and must be returned to the court at the conclusion of the court proceedings, including all appeals and writs brought in the case.

2. Use of records and information obtained through discovery for use in a juvenile court proceeding is limited to that proceeding only.

3. Counsel for the parties may make such copies of the records and information obtained through discovery as are necessary for the preparation and presentation of the case. Counsel is responsible for returning all such copies to the court at the conclusion of the proceeding.

4. Records and information obtained through discovery must be kept in a confidential manner and must not be released, directly or indirectly, to members of the media or any other individuals not directly connected with the court proceeding.

5. Records and information may be reviewed by the parties, their counsel, and any investigator or expert witness retained by counsel to assist in the preparation of the case. Any such person reviewing the records or information must be made familiar with the terms of this rule.

6. All reasonable costs incurred in the reproduction of records under this rule will be the responsibility of the party seeking the records.

D. Any discovery matters not addressed here by this rule or California Rules of Court, rule 5.546 will be treated as a Petition for Disclosure of Juvenile Court Records pursuant to Welfare & Institutions Code section 827 and California Rules of Court, rule 5.552, upon a noticed motion showing good cause as set forth in subdivision (b) above.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 6.1.8

Pretrial Status Conference

A. At the discretion of the court, a pretrial status conference may be heard in the trial-setting department at least 10 calendar days before the date set for trial. Upon stipulation of all parties, the pretrial status conference may be heard within 10 calendar days before the date set for trial.

B. At the status conference, all attorneys must be prepared to address pretrial matters such as the continuing necessity for trial, the identification of contested and uncontested issues, the time estimated for trial, the exchange of witness lists, the filing of motions, the presentation of stipulated and documentary evidence, and requests for judicial notice. The court will establish a date and time certain for trial if one has not been previously set.

(Adopted 1/1/1990; Rev. 7/1/1990; Rev. 1/1/1997; Rev. 1/1/2002; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 6.1.9

Settlement Conference

A. The court need not follow the procedures outlined in this rule where there is clear evidence that a settlement conference will not resolve the matter.

B. If a matter is set for a contested hearing, the court may order the parties and their counsel to appear at a settlement conference, and may schedule dates for both the settlement conference and the hearing. (The hearing will proceed as scheduled only if the matter does not settle.) HHSA social workers may be on telephone stand-by. Unless expressly excused by the court, if any other party fails to appear at the settlement conference, the court may issue a bench warrant for that party.

C. Before the settlement conference, each attorney must conduct a comprehensive interview with his or her client, and make any further investigations that he or she deems necessary to ascertain the facts.

D. At the settlement conference, the attorney for each party must be prepared to discuss the legal and factual issues and must negotiate the case in good faith. Each attorney must be prepared to submit, if appropriate:

1. a list of issues to be litigated;

2. a list of proposed documentary evidence;

3. a list of intended witnesses;

4. a written request for judicial notice (Evid. Code, § 450 et seq.);

5. a list of stipulated evidence which will be presented at the time of trial.

E. If a matter is not resolved at the settlement conference, the court will address pretrial issues. Counsel should be prepared to submit pretrial worksheets addressing the issues described in rule 6.1.8B.

(Adopted 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006)

Rule 6.1.10

Mediation

At the discretion of the court, a case may be referred to mediation. If referred, the court will identify the mediator and set the fee for the mediator's services. The parties and all attorneys will be ordered to appear at the mediation.

(Adopted 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006)

Rule 6.1.11

Use of Social Worker's Report at the Jurisdiction Hearing

At a jurisdiction hearing, the court will receive into evidence any social worker's report or screening summary. If the jurisdiction hearing is a contested hearing, the receipt of the report into evidence will be subject to the following requirements:

A. The report must be filed with the court and made available to the parties or their counsel at least 10 calendar days before the jurisdiction hearing.

B. The social worker or supervisor who prepared or supervised the preparation of the report must be available to testify at the jurisdiction hearing if counsel for the petitioner intends to offer the report into evidence.

C. For purposes of the jurisdiction hearing only, the court will strike any portion of the report containing anonymous information.

D. Upon request of the parent, guardian, child, or their counsel made at least five court days before the jurisdiction hearing, the social worker must either (1) provide the address and/or telephone number, if known, of any person whose statement is included in the social worker's report, or (2) make such person available, if requested, for cross-examination at the jurisdiction hearing. If, upon request, the social worker has not disclosed the address or telephone number, if known, of any witness, and a request is made to interview such witness before the hearing, the social worker must make such witness available for interview if practicable and if the witness is willing.

E. If the social worker, pursuant to subdivision D. of this rule, has provided the address of a witness to the parent, guardian, child, or their counsel, and if such parent, guardian, child, or counsel presents evidence of unsuccessful attempts and due diligence to subpoena such witness for the jurisdiction hearing, and if the court finds there has been due diligence, the court will strike, for purposes of the jurisdiction hearing only, the statements of such witness from the social worker's report. In the alternative, the court may grant a continuance for a period up to 10 court days for the parties, including the social worker, to attempt to subpoena or make such witness available for testimony at the jurisdiction hearing. The court will not grant more than one such continuance in any dependency matter.

F. If the social worker, pursuant to subdivision D. of this rule, has indicated that he or she will make such witness available at the jurisdiction hearing but fails to make such witness available, the court shall strike, for purposes of the jurisdiction hearing only, the statements of such witness from the social worker's report. In the alternative, the court may grant a continuance for a period of up to 10 court days for the parties, including the social worker, to attempt to subpoena or make such witness available for testimony at the jurisdiction hearing. The court will not grant more than one such continuance in any dependency matter.

G. For purposes of this rule, an attachment to a social worker's report is considered part of the social worker's report and will be received into evidence if: (1) such attachment is relevant to the jurisdictional issues, (2) the social worker has referred to the significant portions of such attachment in the body of the report, (3) the social worker used the attachment as part of the basis of any conclusion or recommendation made in the report, and (4) the requirements of subdivisions (a) through F. of this rule have been met.

(Adopted 1/1/1990; Rev. & Renum. 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006)

Rule 6.1.12

Findings at Jurisdiction Hearing

A. Procedure. At a jurisdiction hearing, the court may make a finding on the allegations in the petition by way of one of the following procedures:

1. Admission of Allegations. The court may accept an admission from a party that all or part of the allegations in the petition are true.

Before accepting an admission, the court must satisfy itself that the party understands the nature of the allegations in the petition and understands and waives the trial rights enumerated in California Rules of Court, rule 5.682. The court must also find that there is a factual basis for the admission. The child may object to the finding of a factual basis and may request a contested hearing on that issue.

2. No Contest. The court may accept a plea of "no contest" to the allegations in the petition from a party.

Before accepting a "no contest" plea, the court must satisfy itself that the party understands the nature of the allegations in the petition and understands and waives the trial rights enumerated in California Rules of Court, rule 5.682. The court must also find that there is a factual basis for the "no contest" plea. The child may object to the finding of a factual basis and may request a contested hearing on that issue.

3. Submission on Reports. The court may allow a dependency matter to be submitted on available written reports upon a stipulation by all parties. The reports received by the court for purposes of a determination of jurisdiction may include the screening summary, police reports, and any other reports submitted by the social worker along with any attachments thereto. The court may make a finding that the allegations in the petition are true or not true, in whole or in part, based upon the information contained in the submitted reports.

Before allowing a party to submit the matter for decision based upon these reports, the court must satisfy itself that the party understands the nature of the allegations in the petition and understands and waives the trial rights enumerated in California Rules of Court, rule 5.682.

The party may make a closing argument before the court renders a decision.

4. Contested Hearing. The court may hear the matter as a contested hearing and receive testimonial or documentary evidence properly submitted by the parties. The court will make findings on the allegations in the petition based upon such evidence.

B. Jurisdictional Findings. Inasmuch as a jurisdictional finding is as to the child, and not as to the parent or guardian, the court may make a finding that the child is a person described by Welfare & Institutions Code section 300 only after following the procedures of this rule or after making a finding that reasonable efforts have been made and failed to locate the parent or guardian, as to each and every parent and guardian.
(Adopted 1/1/1990; Rev. & Renum. 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 6.1.13

Court-Appointed Special Advocates (CASAs)

In any action pursuant to Welfare & Institutions Code sections 300-399, the court may, in an appropriate case and in addition to any counsel appointed for a child, appoint a court-appointed special advocate (CASA) to represent the best interests of the child who is the subject of the proceedings. If the court determines that a child would not benefit from the appointment of counsel pursuant to Welfare & Institutions Code section 317 and California Rules of Court, rule 5.660, the court may appoint a CASA for the child to serve as guardian ad litem, as required by Welfare & Institutions Code section 326.5. The CASA has the same duties and responsibilities as a guardian ad litem and must meet the requirements set forth in California Rules of Court, rule 5.660. CASA volunteers must be trained by and function under the auspices of Voices for Children, the court-appointed special advocate program formed and operated under the guidelines established by the National Court Appointed Special Advocate Association, Welfare & Institutions Code sections 100-109, and California Rules of Court, rule 5.655.
(Adopted 1/1/1990; Rev. 1/1/1997; Rev. 1/1/2002; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 6.1.14

Ex Parte Applications and Orders

A. Any party making an ex parte request for an order from the court in a dependency matter must give 24 hours' notice to all other parties or their counsel. A declaration that such notice has been given to all other parties or their counsel must be set forth in the moving papers.

The court may waive such notice only upon a showing of good cause that is set forth by clear facts in a supporting declaration or declarations.

B. Except in emergency matters requiring immediate action, all ex parte applications and proposed orders must be delivered during regular business hours to the clerk of the judicial officer assigned to the case, for presentation to that judicial officer.
(Adopted 1/1/1990; Renum. 1/1/1997; Rev. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006)

Rule 6.1.15

Presence of Child at Court Hearing

A. This rule governs the attendance of children at court hearings unless the child is present by subpoena, the desire to be present, or by other order of the court.

B. Children under four years of age are excused from attending all court hearings.

C. Children four years of age and over must attend if:

1. Directed to attend by the court.

2. Requested to attend by a party or their counsel, and the court finds that:

a. Attending would not be detrimental to the child.

b. The child is not otherwise unable to attend due to disability, physical illness, or medical condition.

D. No child is to be brought to court solely for the child to confer with the child's attorney or to visit parents.

E. If the child is present, the judicial officer in the assigned court may view and speak with the child. If the child is represented by counsel, counsel will also be present.
(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006)

Rule 6.1.16

Procedure for Establishing Paternity; Blood Tests

A. The juvenile court is a proper forum to determine the parentage of a child when such a finding becomes necessary during a dependency proceeding.

B. Any action to determine the biological parentage of a child who is the subject of a dependency proceeding must conform to the provisions of Family Code sections 7620 and 7630 et seq., except that either the petitioner or counsel for the child may also bring the action. Only approved Judicial Council forms may be used in all such actions.

C. Except on stipulation by the parties and agreement of the court, any motion for blood, HLA, or DNA, or similar tests must be properly noticed, in writing, accompanied by a memorandum of points and authorities in support of the motion and a declaration by counsel which specifies the type of test to be conducted, the entity that will perform the test, and the cost of the procedure.

The court must enter appropriate orders for payment of the cost of the test, including but not limited to, apportionment among or between the parties.

D. Any action to determine parentage may be assigned to a referee of the juvenile court upon the filing of a fully executed stipulation that the referee will act in the capacity of a superior court judge. If the parties do not so stipulate, the matter will be transferred to a superior court judge for the sole purpose of hearing the parentage issue.

E. At the conclusion of any such action, the court will enter judgment(s) accordingly.

F. Nothing in this rule will extend any statutory time limits for hearings, including disposition or review. Nor will any provision of this rule preclude the court from issuing any proper interim orders or findings to promote the best interest of the child.

(Adopted 1/1/1990; Rev. & Renum. 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006)

Rule 6.1.17

Confidentiality of Foster Homes (Welfare & Institutions Code section 308)

A. For purposes of this rule, "foster family home" means the home of any person certified or licensed as a foster parent for the detention or placement of children pending or during juvenile dependency proceedings.

B. For purposes of this rule, placement of a child includes the placement or detention of a child by the HHSA or the court pending or during juvenile dependency proceedings.

C. The address of any foster family home in which a child has been placed must be kept confidential at all times except as provided by this rule and any other provisions of law directly applicable to the confidentiality of foster family homes. Nothing in this rule prohibits, where appropriate, the release of the first name of the foster parent and a telephone number at which the foster parent can be reached so as to facilitate contact with the child. Further, nothing in this rule may be construed to restrict the right or ability of the parent or guardian to visitation and contact with the child at a location other than the foster family home where such visitation and contact is in the child's best interest.

D. The safety and protection of the foster family and the safety, protection, physical and emotional well-being of all children placed in the foster family home will be the primary considerations in any decision or ruling made pursuant to this rule.

E. A foster parent may at any time authorize the release of his or her address, thereby waiving the confidentiality of that foster family home.

1. Any such authorization must be in writing, be personally signed and dated by the foster parent, identify the specific individual(s) the foster parent is authorizing release of the foster family home address to, and include a statement that the foster parent is aware of the confidentiality provisions of the law and is voluntarily waiving them.

2. Any such authorization must be provided to the social worker who must maintain the authorization in the HHSA file. The social worker must advise the attorney for the child, if any, and any CASA of the authorization within three court days. The authorization will not go into effect for a period of seven days unless both the social worker and the attorney for the child, if any, concur that waiver of the confidentiality of the foster family home will not endanger the child's safety, protection, physical or emotional well-being. At any time before the expiration of the seven days, the social worker or the attorney for the child, if any, may apply to the juvenile court, with notice to all parties, for an order directing that the address of the foster family home be kept confidential and the reasons therefor.

3. Any such authorization may be withdrawn by the foster family at any time before the actual release of the address of the foster family home. Such withdrawal will not be effective unless communicated to and received by the social worker handling the case before the actual release by the social worker of the address of the foster family home.

F. At the detention hearing the court will make an order that the address of the foster family home must be kept confidential as required by law.

G. Except as provided in subdivision E. of this rule, the confidentiality of the address of a foster family home must be maintained at all times before the disposition hearing or the expiration of 60 days from the date the child was ordered removed or detained, whichever comes first.

H. At the disposition hearing and at any regularly scheduled review hearing, any party to the proceeding may request the court to issue an order releasing the address of the foster family home. No Welfare & Institutions Code section 388 petition will be required at such hearings, but the procedures and standards set forth in subdivision I. of this rule for the consideration and issuance of such an order must be followed. Notice to the foster family home may be made orally, however.

I. Following the disposition hearing or the expiration of 60 days from the date the child was ordered removed or detained, whichever comes first, any interested person may petition the court pursuant to Welfare & Institutions Code section 388 for an order releasing the address of the foster family home.

1. The court will follow the procedures for the determination of a Welfare & Institutions Code section 388 petition, including the summary denial of the petition, but will not grant the petition without a noticed hearing.

2. The foster parent and all parties or their counsel must be noticed for the hearing. The foster parent must be noticed through the HHSA. The foster parent has the right to be present, to be represented by retained counsel, and to participate in the proceedings.

3. The court will not grant the petition unless the person seeking release of the address has met his or her burden to show that new evidence or a change of circumstance establishes good cause for the release of the

address and that the release is in the best interest of the child. For purposes of this determination, the best interest of the child includes, but is not limited to, the safety, protection, physical and emotional well-being of the child, as well as the safety and protection of the foster family with which the child is placed.

4. Any order of the court releasing the address of the foster family home will be stayed for a period of 10 days, and may be stayed for a period in excess of 10 days, to allow any party, including the foster parent, to seek review of the decision through rehearing or petition for extraordinary writ relief.

(Adopted 7/1/1998; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006)

Rule 6.1.18

CASA Reports

In any case in which the court has ordered the appointment of a CASA (court-appointed special advocate), the CASA must submit reports to the court at least two days before each of the following hearings: six-month review; twelve-month review (permanency hearing); eighteen-month review (permanency review hearing); selection and implementation hearing (366.26 hearing); and post-permanency planning reviews. The CASA may submit reports for any special hearings noticed to Voices for Children. If the CASA was appointed before the establishment of jurisdiction, the CASA may submit a report to the court at least two days before the jurisdiction/disposition hearing. The content of the report must be limited to the current condition of the child and needed services; jurisdictional issues must not be addressed (see Cal. Rules of Court, rule 5.655(g)(2)).

Only parties and their counsel are entitled to receive copies of CASA reports. Relatives, de facto parents, foster parents, and service providers are not entitled to receive copies of CASA reports.

CASA reports will be copied and distributed by Voices for Children staff.

(Adopted 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 6.1.19

Substance Abuse Recovery Management System (SARMS)

At the detention or initial hearing, if the HHSA report informs the court that a parent has alcohol and/or drug issues, the court will refer that parent to the Substance Abuse Recovery Management System ("SARMS") for an assessment. If the court subsequently assumes jurisdiction and the parent has not been assessed voluntarily, the court will order that parent to report to SARMS for assessment within 48 hours. If the assessment indicates a need for treatment, the SARMS Recovery Specialist will develop a Recovery Services Plan (RSP) with the parent. The RSP will state the requirements for successful completion of the treatment program (e.g., submission to random urine testing, attendance at treatment program meetings, participation in individual and/or group therapy, et al.) and will be incorporated by reference into the court-ordered reunification case plan. Once the RSP has been developed, the parent must begin treatment immediately.

SARMS shall submit all biweekly progress reports to the court and HHSA. Upon request by counsel, the court will make copies of the progress reports available. SARMS also shall submit reports of noncompliance to the parent's attorney. The progress reports must state whether the parent is actively participating in treatment, the number of sessions or meetings missed, if any, whether those absences were excused, and the results of each urinalysis. After the court has ordered participation in SARMS, review hearings are held after 30 days and 60 days to review the parent's progress.

Noncompliance with the RSP (i.e., a "noncompliant event" as defined in the court's Order to Participate in SARMS, Form SDSC JUV-131) will result in the following sanctions: For the first violation, the parent will receive a judicial reprimand. For each subsequent violation, the parent will be cited for contempt of court for disobeying a court order; a finding of contempt may result in a fine and/or incarceration for up to five days. If and when the parent is found in contempt of court and ordered to jail, the dependency judge will also order that the parent report for a Dependency Drug Court screening hearing after his or her release from jail.

(Adopted 7/1/2003; Renum. 1/1/2006)

CHAPTER 2
ADOPTION RULES

Rule 6.2.1

Adoption Calendar in Juvenile Court

All San Diego Superior Court adoption proceedings must be calendared in either the Juvenile Division at 2851 Meadow Lark Drive, San Diego, or the North County Division at 325 S. Melrose, Vista.

All legal steps must be completed, and all paperwork must be submitted and in order before a final hearing date will be set. Any request for a continuance should be directed to the adoption clerk before presentation to the judge.

(Renum. 1/1/1990; Rev. 1/1/1991; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008)

CHAPTER 3
ATTORNEY SCREENING AND STANDARDS OF REPRESENTATION

Rule 6.3.1

General Competency Requirement

Absent a knowing and intelligent waiver by the party represented, all attorneys appearing in juvenile dependency proceedings must be members in good standing of the State Bar of California and must meet the minimum standards of competence set forth in these rules. These rules apply to attorneys representing public agencies, attorneys employed by public agencies, attorneys appointed by the court to represent any party in a dependency proceeding, and attorneys who are privately retained to represent a party in a dependency proceeding.
(Adopted 1/1/1997; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Renum. 1/1/2006)

Rule 6.3.2

Screening for Competency

A. Absent a knowing and intelligent waiver by the party represented, all attorneys who represent parties in juvenile dependency proceedings must meet the minimum standards of training and/or experience set forth in these rules.

No attorney will be appointed by the court to represent a party in a dependency proceeding who has not submitted to the court and had approved a Certification of Competency as set forth in Appendix A of these rules. Further, no retained counsel will be allowed to appear on behalf of a party in a dependency proceeding without having submitted to the court and had approved a Certification of Competency or a knowing and intelligent waiver by the party of such certification.

B. Attorneys who meet the minimum standards of training and/or experience set forth in rule 6.3.3, as demonstrated by the information contained in the Certification of Competency submitted to the court, are deemed competent to practice before the juvenile court in dependency cases, except as provided in subdivision C. of this rule.

C. Upon submission of a Certification of Competency which demonstrates that the attorney has met the minimum standards for training and/or experience, the court may determine, based on conduct or performance of counsel before the court in a dependency case, that a particular attorney does not meet minimum competency standards. Further, the court retains the authority to review the general conduct and performance of an attorney and to decertify such attorney for good cause at any time. The court may order denial of certification and decertification only after the attorney has been given notice of the intended action and an opportunity to be heard.

D. Any attorney appearing before the court in a dependency case who does not meet the minimum standards of training and/or experience must notify the court to that effect. The clerk of the court must notify the represented party by first-class mail to the party's last known address and the attorney at least 10 days before the hearing date of the following: (1) a hearing date, time, and location; (2) that at that hearing the court will consider the issue of whether to relieve counsel for failing to complete the requisite training and to provide a Certification of Competency; and (3) that failure to appear for the hearing will be deemed a waiver of any objection and acquiescence to the relief of appointed counsel. At that hearing, absent a knowing and intelligent waiver by the party represented, the court must relieve such appointed counsel and must appoint certified counsel for the party whose attorney failed to complete the required training. If the attorney relieved is a member of a public agency, the agency has the right to transfer the case to a certified attorney within that agency. In the case of retained counsel, the court must notify the party that his or her counsel has failed to meet the minimum standards required by these rules. The determination whether to waive certification or obtain substitute private counsel is solely within the discretion of the party so notified.

E. If a retained attorney maintains his or her principal office outside of this county, proof of certification by the juvenile dependency court of the California county in which the attorney maintains an office will be sufficient evidence of competence to appear in a juvenile dependency proceeding in this county.
(Adopted 1/1/1997; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Renum. 1/1/2006)

Rule 6.3.3

Minimum Standards of Education and Training

A. No attorney appearing in a dependency matter before the juvenile court may be certified by the court as competent until the attorney has completed the following minimum training and educational requirements.

1. Before certification, the attorney must have either:

a. At least six months of experience in dependency proceedings in which the attorney has demonstrated competence in representing his or her clients. To qualify for certification under this paragraph, the attorney must have made a substantial number of appearances and handled a variety of dependency hearings, including contested hearings. In determining whether the attorney has demonstrated competence, the court will consider, among other things, whether the attorney has demonstrated knowledge and understanding of the topics listed in paragraph b. of this subdivision.

b. Obtained at least 12 hours of training or education in juvenile dependency law, which included applicable case law and statutes, rules of evidence, state and local rules of court, Judicial Council forms, motions, trial techniques and skills, writs and appeals, child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, reasonable efforts, the educational rights of children, the Uniform Child Custody Jurisdiction and Enforcement Act, the Interstate Compact on the Placement of Children, and the Indian Child Welfare Act.

2. If an attorney has obtained the required training or education but has not represented parties in a substantial number of dependency cases as determined by the juvenile court, the court must grant a provisional certification pending satisfactory completion of a mentor program within three months. While under the mentor's supervision, the attorney must try at least three contested hearings and handle at least one detention hearing, one jurisdiction hearing, one disposition hearing, one pre-permanency planning review, one supplemental petition, and one petition to modify a prior order. The attorney and the mentor must consult at least weekly regarding the handling of the attorney's cases. The mentor must be present and observe the attorney handle at least one contested hearing and such other hearings as are necessary and appropriate.

While serving under a provisional certification, an attorney may be appointed to represent parties in dependency cases and to receive compensation for such representation. For purposes of this program, a "mentor" is an attorney who has been approved to serve as a mentor by the supervising judge of the dependency court, has at least three years' experience handling dependency cases, has a current competency certification, and has agreed to serve without compensation as a mentor under this program. If the provisionally certified attorney is employed by a public agency, the mentor must be the supervising attorney of that agency or his/her designee.

B. Each attorney who has been certified by the court will submit a new Certification of Competency to the court on or before January 31st of the same year in which the attorney must certify his or her MCLE credits to the State Bar of California. The new Certification must be accompanied by evidence of 18 hours of continuing dependency education or training which were completed in the three years after the previous Certification was issued.

If the training or education was not presented by a California MCLE provider, the documentation of attendance is subject to the approval of the juvenile court. Evidence of training or education may include: a copy of a certificate of attendance issued by a California MCLE provider; a certificate of attendance issued by a professional organization which provides training and/or education for its members, whether or not it is a MCLE provider; a copy of the training or educational program schedule together with evidence of attendance at such program; proof of attendance at a court-sponsored or court-approved program; or such other documentation that demonstrates the relevance of the program and the attorney's attendance at such program.

C. At least one-half of the attorney's continuing training or education hours must be in the areas set forth in subdivision A.1.b. of this rule. The remaining hours may be in other areas related to juvenile dependency practice, including, but not limited to, special education, mental health, health care, immigration, adoption, guardianship, parentage, the Parental Kidnapping Prevention Act, state and federal public assistance programs, client interviewing and counseling techniques, case investigation, and settlement negotiations and mediation.

D. When a previously certified attorney fails to submit evidence that he or she has completed the minimum required training and education for recertification to the court by the due date, the court will notify the attorney in writing by first-class mail that he or she will be decertified unless the attorney submits, within 20 days of the date of the mailing of the notice, evidence of completion of the required training or education. If the attorney fails to submit evidence of the required training or education, the court shall proceed as set forth in rule 6.3.2D.
(Adopted 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006)

Rule 6.3.4

Standards of Representation

A. Basic Attorney-Client Obligations. All attorneys appearing in dependency proceedings must advise their clients of the legal and factual aspects of the client's case and must represent their clients' interests vigorously within applicable legal and ethical boundaries.

In performing these duties, each attorney is expected to:

1. Thoroughly and completely investigate the accuracy of the allegations, explore any possible defenses, and consider alternatives to court action;

2. Meet regularly with clients, including clients who are children, regardless of the age of the child or the child's ability to communicate verbally;

3. Advise the client of the risks and benefits of the possible courses of action, including the taking of writs and appeals;

4. Determine the client's desires and interests;

5. Advocate the client's desires and interests to the court and other parties;

6. Contact social workers and other professionals associated with the client's case;

7. Work with other counsel and the court to resolve disputed aspects of a case without contested hearings;

8. Adhere to mandated timelines;

9. Inform the client of the procedure for lodging a complaint against the attorney;

10. Be familiar with relevant constitutional, statutory, and case law; and

11. Possess fundamental legal skills and a rudimentary understanding of relevant interdisciplinary topics.

In addition to the duties listed above, counsel for the child or counsel's agents are expected to:

12. Have sufficient direct, personal contact with the child to establish and maintain an adequate and professional attorney-client relationship;

13. Explain fully, consistent with the child's ability to understand, the nature and consequences of the court proceedings;

14. Have sufficient contact with the child's caregiver, CASA, if any, and/or therapist, if any, to accurately assess the child's well-being and needs;

15. Monitor the child's development throughout the course of the proceedings and advocate for services that will provide a safe, healthy, and nurturing environment for the child;

16. Maintain a caseload that allows the attorney to perform the duties required by Welfare & Institutions Code section 317, subdivision (e), and California Rules of Court, rule 5.660, and to otherwise adequately counsel and represent the child; and

17. Immediately inform the court of any interest or right of the child which may need to be protected or pursued in other judicial or administrative forums and seek instructions from the court as to appropriate procedures to follow.

B. Relevant Laws and Programs. All attorneys practicing in dependency proceedings must have a working knowledge of the following statutes and rules, as well as the cases interpreting and applying them:

1. Welfare & Institutions Code sections 200-399, 825-830, 900-903.5, 10850, 11400 et seq. [AFDC-FC], and 16000 et seq.;

2. California Rules of Court, rules 5.501-5.740, 8.400-8.474;

3. Code of Civil Procedure sections 128, 170, 170.6, 917.7, and 1209;

4. Education Code sections 56000 et seq. and Government Code section 7579.5 [educational rights of children];

5. Evidence Code;

6. Family Code sections 3400 et seq. [Uniform Child Custody Jurisdiction and Enforcement Act], 7500 et seq. [Parental Rights; Paternity Presumptions, Blood Testing, and Voluntary Declarations], 7600 et seq. [Uniform Parentage Act], 7800 et seq. [Freedom from Parental Custody and Control], 7900 et seq. [Interstate Compact on Placement of Children], and 7950 et seq. [Foster Care Placement Considerations];

7. Penal Code sections 11165 et seq. [Child Abuse and Neglect Reporting Act];

8. Title 25, United States Code, sections 1901-1963 [Indian Child Welfare Act] and Indian Child Custody Guidelines published at 44 Federal Register 67,584 (1979);

9. San Diego Superior Court Rules, Division VI-Juvenile.

The following areas of the law and local programs are critical in many dependency cases, and counsel must develop a working knowledge of them as they become applicable to individual cases.

10. The Substance Abuse Recovery Management System ("SARMS") and Dependency Drug Court;

11. Special immigrant juvenile status under Title 8, United States Code section 1101;

12. Title 28, United States Code section 1738A [Parental Kidnapping Prevention Act];

13. Criminal law, juvenile delinquency law, and the San Diego Juvenile Court protocol regarding dual jurisdiction cases;

14. Mental health law (Welfare & Institutions Code sections 4500 et seq. [Lanterman Developmental Disabilities Services Act], 5000 et seq. [Lanterman-Petris-Short Act], 5850 et seq. [Children's Mental Health Services Act], and 6000 et seq. [Admissions and Judicial Commitments];

15. Family Code sections 6200 et seq. [Domestic Violence Prevention Act];

16. San Diego County Child Victim-Witness Protocol;

17. Other relevant portions of federal and California law relating to the abuse or neglect of children and to children's mental and physical welfare.

C. Legal Skills. In addition to basic legal knowledge, counsel must have and continue to develop the following basic legal skills:

1. Basic trial skills (e.g., proper and succinct direct and cross-examination, proper objections);

2. Basic advocacy skills (e.g., client interviewing and counseling, case investigation, settlement negotiation, witness preparation, use of experts);

3. Relevant motion practice (e.g., motions pursuant to Welfare & Institutions Code sections 350, 388, 390);

4. Sufficient understanding of writ and appellate practice to advise a client whether and how to seek such remedies and to arrange for a specialist to pursue them when necessary.

D. Relevant Interdisciplinary Skills. The dependency system is complex in that it frequently involves issues arising from a variety of disparate and highly specialized areas. A collaborative problem-solving approach usually improves outcomes for children and families. Attorneys appearing in dependency court cannot effectively represent their clients without a fundamental understanding of the interdisciplinary issues listed below and the ability to obtain more detailed insight as the demands of individual cases require. Attorneys should have a general familiarity with and receive ongoing training in the following areas:

1. Dynamics of child abuse and neglect

2. Child development

- **a.** Interviewing children
- **b.** Children as witnesses

c. Developmental milestones as they relate to the identification and consequences of child abuse and neglect

3. Risk assessment
4. Substance abuse - the addiction and recovery process
5. Mental health issues
a. Purposes and uses of psychological and psychiatric evaluations
b. Purposes and expectations of various modalities of therapy
c. Psychotropic medications
6. Medical issues
a. Traumatic injuries
b. Nutritional deficits
c. Drug toxicity in children
7. Government payment issues
a. AFDC-Foster Care
b. CalWORKS and TANF
c. Medi-Cal
d. County Treasury funds
e. Supplemental Security Income (SSI)
f. Social Security Administration (SSA)
g. Adoption Assistance Program (AAP)
h. Kin-GAP funds
8. Cultural issues
9. Poverty issues
10. Education issues
11. Domestic violence
12. Family reunification and preservation
13. Reasonable efforts

(Adopted 1/1/1997; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2007)

CHAPTER 4
PROCEDURES FOR REVIEWING AND RESOLVING COMPLAINTS

Rule 6.4.1

Reviewing and Resolving Complaints

A. Written notice of the procedure for resolving complaints will be provided in each courtroom at the adult client's first appearance. The child's attorney must provide written notice of the procedure to a child 10 years of age or older or to the caregiver of a child under 10 years of age. Information regarding the procedure will be available in the clerk's office.

B. Any participant who has a complaint about the performance of a juvenile court attorney may lodge a written complaint with the court hearing the matter (hereinafter, the court).

C. Upon receipt of a written complaint, the court will notify the attorney in question and his or her supervisor, if any, provide the attorney with a copy of the complaint and give the attorney 20 days from the date of the notice to respond to the complaint in writing. The attorney should attempt to obtain an informal resolution of the matter before responding to the complaint.

D. After the attorney has responded to the complaint or the time for submission of a response has passed, the court will review the complaint and the response, if any, to determine whether the attorney acted contrary to local rules or policies of the court or has acted incompetently. The court may ask the complainant or the attorney for additional information before making a determination on the complaint.

E. If, after reviewing the complaint, the response, and any additional information, the court finds that the attorney acted contrary to the rules or policies of the court, the court may reprove the attorney, either privately or publicly, and may, in cases of willful or egregious violations of local rules or policies, issue such reasonable monetary sanctions against the attorney as the court may deem appropriate.

F. If, after reviewing the complaint, the response, and any additional information, the court finds that the attorney acted improperly, the court may order that the attorney practice under the supervision of a mentor attorney for a period of at least six months, that the attorney complete a specified number of hours of training or education in the area in which the attorney was found to have acted improperly, or both. In cases in which the attorney's conduct caused actual harm to his or her client, the court may order additional hearings to determine whether that attorney should be relieved. The court may refer the matter to the State Bar of California for further action.

G. The court will notify the attorney at the attorney's address of record and the complaining party in writing of its determination of the complaint. If the court makes a finding of improper conduct, incompetence, or harm to the client under subdivision E. or F., the attorney may request a hearing in writing concerning the court's proposed action. If the attorney does not request a hearing within 10 days from the date the notice was sent, the court's determination will become final.

H. If the attorney requests a hearing, the hearing will be held as soon as practicable after the attorney's request therefor, but in no case will it be held more than 30 days after it has been requested except by stipulation of the parties. The complainant and the attorney will each be given at least 10 days' notice of the hearing. The hearing may be held in chambers. The hearing will not be open to the public. The court may designate a commissioner, referee, judge pro tempore, or other member of the Bar to act as hearing officer.

I. At the hearing, each party will have the right to present arguments to the hearing officer with respect to the court's determination. Such arguments must be based on the evidence before the court at the time the determination was made. No new evidence may be presented unless the party offering such evidence can show that it was not reasonably available to the party at the time that the court made its initial determination with respect to the complaint. Within 10 days after the hearing, the court or hearing officer will issue a written determination upholding, reversing, or amending the court's original determination. The hearing decision will be the final determination of the court with respect to the matter. A copy of the hearing decision will be provided to both the complainant and the attorney.

J. Nothing in these rules preclude any person or public agency from pursuing rights afforded them by any other statute or rule of law.

(Adopted 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006)

CHAPTER 5
PROCEDURES FOR INFORMING THE COURT OF OTHER INTERESTS OF A DEPENDENT CHILD
(Welf. & Inst. Code, §§ 317, 317.6; Cal. Rules of Court, rule 5.660)

Rule 6.5.1

Informing the Court of Other Interests of a Dependent Child

A. At any time while a dependency proceeding is pending, any interested person may notify the court that the child who is the subject of the proceeding may have an interest or right which needs to be protected or pursued in another judicial or administrative forum.

1. Notice to the court may be given by filing Judicial Council form JV-180 (Request to Change Court Order), by filing a declaration, or, in the case of an individual who is not a party to the action, by sending a signed letter addressed to the court.

2. The person giving notice must set forth the nature of the interest or right which needs to be protected or pursued, the name and address, if known, of the administrative agency or judicial forum in which the right or interest may be affected, the nature of the proceedings being contemplated or conducted there, and any case number or other identifying information regarding the proceeding.

3. If known to the person giving notice, the notice must also set forth what action on the child's behalf the person believes is necessary, whether counsel on a pro bono or contingency basis may be necessary or appropriate to take action on behalf of the child in the other forum, whether the nomination of a guardian ad litem to initiate or pursue a proposed action may be appropriate, whether joinder of an administrative agency to the juvenile court proceedings pursuant to Welfare & Institutions Code section 362 may be appropriate or necessary to protect or pursue the child's interest, and whether further investigation may be necessary.

B. A copy of the notice must be served on the child's social worker and on the child's attorney and/or CASA before the notice is filed with the court. Such service may be effected by personal service, first-class mail, or the equivalent, and must be indicated on a proof of service filed with the notice. If the child is not represented by separate counsel, the notice must so state. In the case of an individual who is not a party to the action who files a letter with the court, the clerk of the court will serve a copy of the letter on the child's social worker and on the child's attorney and/or CASA.

C. The court may set a hearing on the notice if the court deems it necessary in order to determine the nature of the child's right or interest and whether steps need to be taken to protect or pursue that right or interest in another forum.

D. If the court determines that further action on behalf of the child is required, the court may do one or more of the following:

1. If the child is unrepresented, appoint an attorney for the child in the dependency proceedings and direct that such attorney investigate the matter and report back to the court pursuant to Welfare & Institutions Code section 317, subdivision (e).

2. Authorize an attorney to pursue the matter on the child's behalf in the other forum on a pro bono or contingency basis.

3. Appoint a guardian ad litem for the child to make decisions on the child's behalf related to the potential civil proceedings. Upon the filing of an action in another forum, that court may reappoint the guardian ad litem appointed by the juvenile court or appoint a different person as guardian ad litem for the child pursuant to Code of Civil Procedure section 372.

4. Notice a joinder hearing pursuant to Welfare & Institutions Code section 362, subdivision (a), compelling a responsible agency to report to the court as to whether it has fulfilled its legal obligation to provide services to the child.

5. Take such other action the court may deem necessary or appropriate to protect the welfare, interests, and rights of the child.

E. County treasurer funds may not be used to fund legal or other services in another forum outside the juvenile dependency proceedings.

(Adopted 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

CHAPTER 6
ACCESS TO CONFIDENTIAL INFORMATION

Rule 6.6.1

Disclosure of Information Relating to Children and their Families–Preliminary Provisions

For purposes of this rule, "juvenile court records" include:

- those records defined in California Rules of Court, rule 5.552;
- records kept in Health & Human Services Agency ("HHSA") files pursuant to Welfare & Institutions Code section 10850 and Penal Code section 11165 et seq., regardless of whether a Welfare & Institutions Code section 300 petition was filed in the case;
- records kept in Probation Department files, regardless of whether a Welfare & Institutions Code section 601 or 602 petition was filed in the case; and
- testimony from HHSA or Probation personnel regarding any information contained in juvenile court records (cf. *City of San Diego v. Superior Court* (1981) 136 Cal.App.3d 236, 239).

For purposes of this rule, "juvenile court records" do **not** include:

- records sealed pursuant to Welfare & Institutions Code section 389 or 781;
- records maintained by the Department of Motor Vehicles; and
- records regarding offenses that were tried in the criminal division of the court because the minor was found unfit to be tried in the juvenile division.

For purposes of this rule, "disclosure" or "access" provides for inspection, but not photocopying, at the court's business office or the HHSA or Probation office where the records are maintained, unless otherwise ordered by the court.

If the court authorizes photocopying, it must be done by court or HHSA or Probation personnel as appropriate, unless otherwise ordered by the court or agreed to by the parties. The person or agency obtaining photocopies must pay for the copying (in accordance with the current San Diego Superior Court Schedule of Fees).

Juvenile court records may not be obtained by civil or criminal subpoena. A waiver of confidentiality by any person identified or described in the requested records does not automatically confer a right of access to those records.

(Adopted 1/1/1999; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 6.6.2

Disclosure of Juvenile Court Records to Persons and Agencies Not Designated in Welfare & Institutions Code Section 827 - Petition for Disclosure (JV-570) Required

(For procedures relating to prehearing discovery of dependency records by the parties to a dependency proceeding and their counsel, see rule 6.1.7.)

A. Except as otherwise provided in Chapter Six of these rules, if a person or agency not designated in Welfare & Institutions Code section 827 seeks access to juvenile court records, including documents and information maintained by the court, the Probation Department, or the HHSA, that person or agency must file a Petition for Disclosure of Juvenile Court Records on Judicial Council form JV-570. The petition must be filed with the clerk in the Juvenile Court Business Office or other clerk designated to receive such petitions. The petition must comply with California Rules of Court, rule 5.552 and with these rules.

Petitioner must give notice as required by California Rules of Court, rule 5.552(d). Service must be to the subject of the juvenile records if he or she is no longer a minor or, if still a minor, upon a person authorized to act on his or her behalf (e.g., parent, guardian, attorney, etc.). This notice is not required if a written waiver of such notice is obtained from the minor (if now an adult) or a person authorized to act on the minor's behalf. For good cause shown, the court may waive such notice.

If the records are sought for use in a legal action which is not a juvenile court proceeding, petitioner must also give notice by personal service or first-class mail to all parties in that action.

The petition should be prepared as follows:

1. Enter petitioner's name and address.

2. Enter petitioner's relationship to the child whose records are sought.

3. Mark the appropriate boxes.

4. Describe in detail the records sought (e.g., entire court file, specific documents in court file, information in HHSA/Probation files, social worker/probation officer testimony regarding file).

- State that the petition is "based on knowledge, information, and belief that such records exist and are relevant to the purpose for which they are being sought." (Cal. Rules of Court, rule 5.552(c).)

- Specify the type of disclosure requested (e.g., inspection, photocopies, or both).

5. Mark the appropriate boxes.

- Describe in detail the reasons the records are being sought and their relevancy to the proceeding or purpose for which petitioner seeks access to the records. (Cal. Rules of Court, rule 5.552(c).)

- Explain why disclosure is necessary, i.e., why petitioner has no other method to obtain this information other than through disclosure of the requested records. (Cal. Rules of Court, rule 5.552(b).)

- Explain how the records sought are reasonably likely to disclose "information or evidence of substantial relevance to the pending litigation, investigation, or prosecution." (Cal. Rules of Court, rule 5.552(b).)

- Explain how petitioner will use the records if the court grants the petition.

6. Mark the appropriate boxes and enter the information requested. (See Cal. Rules of Court, rule 5.552(d) for notice requirements.)

7. Mark the appropriate boxes.

8. Mark the box if appropriate.

The petition may be supported by a declaration of counsel and/or a memorandum of points and authorities.

If the petition is granted, the court will issue a protective order specifying the records to be disclosed and the procedure for providing access and/or photocopying. (Cal. Rules of Court, rule 5.552(b).) Persons or agencies obtaining records under such authorization must abide by the terms of the protective order. Any unauthorized disclosure or failure to comply with the terms of the order may result in vacation of the order and/or may be punishable as contempt of court. (See Welf. & Inst. Code, § 213.)

This rule is not intended to replace, nullify, or conflict with existing laws (including Pen. Code, § 11167, subd. (d)) or the policies of the HHSA, the Probation Department, or any other public or private agency. This rule does not prohibit the release of general information on Juvenile Court policies and procedures.

(Adopted 1/1/1999; Renum. 7/1/2001; Rev. 1/1/2002; Rev. 1/1/2005; Rev. 1/1/2007; Rev. 1/1/2008)

Rule 6.6.3

Reserved for Future Use

(Adopted 1/1/1999; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Del. 1/1/2008)

Rule 6.6.4

Disclosure of Dependency Records to Persons and Agencies Not Designated in Welfare & Institutions Code Section 827 - Petition to View Records (SDSC JUV-004) Required

A. In addition to the persons and agencies designated in Welfare & Institutions Code section 827, the following may have access to dependency records and/or obtain photocopies of dependency records without a prior court order, subject to the conditions specified, on the basis that 1) disclosure will be in the best interest of the child whose records are sought and 2) the information contained in those records is necessary and relevant to:

- a juvenile dependency or delinquency proceeding;
- a civil or criminal investigation or proceeding;
- a proceeding involving child custody or visitation;
- a proceeding involving adoption, guardianship, or emancipation of a minor;
- an action to establish paternity;
- an administrative proceeding regarding foster home licensure;
- a proceeding involving probate or conservatorship; or
- a proceeding involving domestic violence.

1. Judicial officers of the San Diego Superior Court Family Division, when the child who is the subject of the records, or his or her sibling, is also the subject of custody or visitation proceedings under Family Code section 3000 et seq. (see Fam. Code, §§ 3011, subd. (b), and 3020).

2. County Counsel, for the purpose of representing HHSA in a dependency case or civil action.

3. San Diego County Juvenile Probation Officers, when the child who is the subject of the records is also the subject of juvenile court proceedings under Welfare & Institutions Code section 601 or 602. In such cases, which are subject to the court's Protocol for Coordination in Dual Jurisdiction Matters, the following persons may have access to the child's delinquency records, including minute orders, and/or may obtain photocopies of the delinquency records without a prior court order: [1] HHSA social workers, [2] all dependency attorneys actively participating in juvenile proceedings involving the child, and [3] the child's CASA, if any. Copies of any joint assessment report, prepared pursuant to Welfare & Institutions Code section 241.1 and filed with the court, must be provided to the DA, the child's defense attorney and dependency attorney, County Counsel, the HHSA social worker, the probation officer, any CASA, and any other juvenile court having jurisdiction over the child.

4. CASAs (Voices for Children, Inc.), as provided under Welfare & Institutions Code sections 105, 107.

5. An Indian child's tribe, as provided under Title 25, United States Code chapter 21 [Indian Child Welfare Act].

6. Employees or agents of San Diego Superior Court Family Court Services and members of the Family Court Case Consultation Team.

7. Employees or agents of San Diego County Mental Health Services (Health & Human Services Agency).

8. Any licensed psychiatrist, psychologist, or other mental health professional ordered by the San Diego County Superior Court, Family Division, to examine or treat the child or the child's family.

9. Any hospital providing inpatient psychiatric treatment to the child, for purposes of treatment or discharge planning.

10. Any government agency engaged in child protection.

11. The San Diego County Victim Assistance Program and the State Board of Control Victims of Crime Program, for the purpose of providing services to a victim of or a witness to a crime.

12. The Parole Services and Community Corrections Branch of the California Department of Corrections and Rehabilitation.

13. The California Board of Prison Terms, as provided under Penal Code section 11167.5, subdivision (b)(9).

14. Members of the San Diego County Juvenile Justice Commission.

15. The San Diego County Board of Supervisors or their agent(s), for the purpose of investigating a complaint from a party to a dependency proceeding.

16. Public and private schools, for the sole purpose of obtaining the appropriate school placement for a child with special education needs pursuant to Education Code section 56000 et seq.

17. Investigators and investigative specialists employed by the San Diego County District Attorney and assigned to the Child Abduction Unit, when seeking the records of a child who has been reported as detained or concealed in violation of Penal Code sections 278 and 278.5, for the sole purpose of investigating and prosecuting persons suspected of violating Penal Code sections 278, 278.5, and related crimes.

18. Investigators employed by attorneys who represent parties in dependency proceedings, when seeking records that may be released to the attorney without a court order under Welfare & Institutions Code section 827.

19. The Mexican Consulate, when seeking the records of a child who is in protective custody and/or is before the court for a dependency action, and either: [a] is a Mexican national, or [b] has relatives (as defined in Welf. & Inst. Code, § 319) who are Mexican nationals.

20. The U.S. Social Security Administration, for the purpose of determining a child's eligibility for benefits.

21. Choice Program staff, for the purpose of providing intensive supervision and support to wards and dependents of the court, children with active HHSA files who are at high risk for group home or institutional placement, and the families of these children, including access to electronic data to assist in research and evaluation of the Choice Program.

22. The San Diego County Regional Center for the Developmentally Disabled.

23. The San Diego County Probation Department, when performing its duty under Penal Code section 1203.097 to certify treatment programs for domestic violence offenders, for purposes of documenting a treatment program's failure to adhere to certification standards and identifying serious practice problems in such treatment programs, provided that in any proceeding for the suspension or revocation of a treatment provider's certification or in any document related thereto, the Probation Department must not disclose any child's name.

Persons seeking access to and/or photocopies of dependency records under this rule must fill out, sign, and submit to the clerk in the Juvenile Court Business Office (or other clerk designated to receive such petitions) a "Petition to View Records and/or Request for Copies" (SDSC form JUV-004). The completed form will be kept in the file that is the subject of the Petition and/or Request.

B. In addition to the persons and agencies designated in Welfare & Institutions Code section 827, the following may inspect or receive verbal information regarding dependency records without a prior court order (but must file a Petition for Disclosure [JV-570] to obtain photocopies), subject to the conditions specified, on the basis that [1] disclosure will be in the best interest of the child whose records are sought and [2] the information contained in those records is necessary and relevant to the proceeding or purpose for which the records are sought:

1. U.S. Department of Justice prosecutors or their agents.

2. U.S. military prosecutors or their agents.

3. Federal Bureau of Investigation agents.

4. California Attorney General's Office prosecutors.

5. Any other agency or office authorized to investigate or prosecute criminal or juvenile cases under state or federal law.

6. Any attorney appointed to represent the child in Family Court proceedings pursuant to Family Code section 3150.

Persons seeking access to and/or photocopies of dependency records under this subdivision must present a photo I.D. and proof that they are entitled to access and/or photocopies (e.g., law enforcement badge or Bar card).

Persons seeking access (but not photocopies) to dependency records under this subdivision must fill out, sign, and submit to the clerk in the Juvenile Court Business Office (or other clerk designated to receive such petitions) a "Petition to View Records and/or Request for Copies" [SDSC form JUV-004]. The completed form will be kept in the file that is the subject of the Petition and/or Request.

Persons seeking photocopies of dependency records under this subdivision must file a Petition for Disclosure [JV-570] (see rule 6.6.2).

C. Persons or agencies obtaining records under this rule must not disclose such records to another person or agency unless authorized to do so by the Juvenile Court. Any unauthorized disclosure may be punishable as provided by applicable laws.

D. This rule is not intended to replace, nullify or conflict with any existing policies of the HHSA, the Probation Department, or any other public or private agency. This rule does not prohibit the release of general information on Juvenile Court policies and procedures.

(Adopted 1/1/1999; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008)

Rule 6.6.5

Disclosure of Dependency Records to Counsel for the Child in a Delinquency Proceeding

A. Counsel appointed by the court or privately retained to represent a child in a delinquency proceeding (Welf. & Inst. Code, § 601 et seq., including Welf. & Inst. Code, § 707) may have access to the child's dependency records, as defined in rule 6.6.1, without a prior court order, subject to the following:

1. Counsel must give notice to the HHSA social worker assigned to the child's case (or the HHSA Legal Procedures Liaison, if there is no assigned social worker) at least five days before counsel will inspect records maintained by the HHSA.

2. Counsel will not have access to any information which would tend to identify a reporter of child abuse or neglect, as prohibited under Penal Code sections 11167 and 11167.5.

3. Counsel will not have access to any information regarding HIV testing or HIV infection, as prohibited under Health & Safety Code section 120975 (formerly § 199.20) et seq.

4. Counsel will not have access to any confidential or privileged information regarding persons other than his or her child client.

5. Persons seeking access to dependency records under this rule must fill out, sign, and submit to the clerk in the Juvenile Court Business Office (or other clerk designated to receive such petitions) a "Petition to View Records and/or Request for Copies" [SDSC form JUV-004]. The completed form will be kept in the file that is the subject of the Petition and/or Request.

For purposes of this rule, "access" provides for inspection, but not photocopying, of dependency records at the court's business office or the HHSA office where the records are maintained, unless otherwise ordered by the court.

B. Counsel appointed by the court or privately retained to represent a child in a delinquency proceeding (Welf. & Inst. Code, § 601 et seq., including Welf. & Inst. Code, § 707) must file a Petition for Disclosure of Juvenile Court Records on Judicial Council form JV-570 (see rule 6.6.2), with a request for a protective order (see Cal. Rules of Court, rule 5.552(b)), in order to:

1. Obtain photocopies of the child's dependency records.

2. Counsel appointed by the court or privately retained to represent a child in a delinquency proceeding (Welf. & Inst. Code, § 601 et seq., including Welf. & Inst. Code, § 707) must file a Petition for Disclosure of Juvenile Court Records on Judicial Council form JV-570 (see rule 6.6.2), with a request for a protective order (see Cal. Rules of Court, rule 5.552(b)), in order to:.

3. Disseminate information obtained from inspection of the child's dependency records to any persons or agencies not authorized to obtain such information under Welfare & Institutions Code section 827.

Notice of the filing of the Petition for Disclosure must be given as required by California Rules of Court, rule 5.552(d).

If the court authorizes photocopying, it must be done by court or HHSA personnel as appropriate, unless otherwise ordered by the court or agreed to by the parties. The person or agency obtaining photocopies must pay for the copying (in accordance with the current San Diego Superior Court Schedule of Fees).

Dependency records may not be obtained by civil or criminal subpoena. A waiver of confidentiality by any person identified or described in the requested dependency records does not automatically confer a right of access to those records.

(Adopted 1/1/1999; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 6.6.6

Disclosure of Probation Records to Counsel for the Child in a Delinquency Proceeding

The attorney representing a child in a delinquency proceeding may view the child's probation file after obtaining a judge's signature on the JUV-004 Petition to View Records. The probation file may only be copied if the attorney successfully brings a Petition for Disclosure of Juvenile Court Records [JV-570] pursuant to Welfare & Institutions Code section 827.

(Adopted 1/1/2006)

Rule 6.6.7

Disclosure of Law Enforcement Reports Regarding Juveniles to Persons and Agencies not Designated in Welfare & Institutions Code Section 828

If a person or agency not designated in Welfare & Institutions Code section 828 seeks access to unsealed records held by a law enforcement agency, including reports regarding children who are the subject of juvenile court

proceedings, that person or agency must file a Petition to Obtain Report of Law Enforcement Agency/Juvenile [Judicial Council form JV-575] with the clerk in the Juvenile Court Business Office or other clerk designated to receive such petitions. The petition must set forth with specificity the reasons for the request, the information sought, and its relevancy to the proceeding or purpose for which petitioner seeks the information.
(Adopted 1/1/1999; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 6.6.8

Disclosure of Medical Information to Foster Parents and Other Care Providers

Upon discharge of an infant, who is a dependent of the court or who is on a "hospital hold" pursuant to Welfare & Institutions Code section 309, subdivision (b), or section 16525.14 [Options for Recovery], and the release of such infant to a foster parent designated by the HHSA pursuant to Welfare & Institutions Code section 16525.30 (or other care provider as permitted by law), the health care provider discharging the infant may provide to the foster parent or other care provider a written summary of the infant's medical history, diagnosis, and treatment, if necessary for the proper treatment of the infant after discharge.
(Adopted 1/1/1999; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Renum. 1/1/2006)

Rule 6.6.9

Disclosure of IEPs, Immunization Records, and Other Health Records to HHSA Social Workers and Children's Attorneys

In any case where a child is under the dependency jurisdiction of the court (Welf. & Inst. Code, § 300 et seq.) or under informal supervision pursuant to Welfare & Institutions Code section 360, the HHSA social worker assigned to the child's case and the attorney representing the child in dependency proceedings (see Welf. & Inst. Code, § 317, subd. (f)) may receive, upon request, copies of any written individualized education programs (IEPs), immunization records, and any other school or health records maintained by 1) a public school district or private school in which the child is or was enrolled, 2) a hospital to which the child is or was admitted, or 3) a health care provider who is or was providing medical, dental, psychiatric, or psychological treatment for the child.
(Adopted 1/1/1999; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Renum. 1/1/2006)

Rule 6.6.10

Disclosure of Information Regarding HHSA Clients Receiving Voluntary Services

The HHSA may share certain information from its files regarding children and families who are receiving voluntary case services from the HHSA, including but not limited to information concerning health care, mental health services, educational services, social services, or wraparound services provided to the child and/or family. This information may be shared only with individuals or organizations providing ongoing health care, mental health services, educational services, or social services to the child and/or family in order to protect and promote the child's physical and emotional well being. The information described in this rule may be exchanged only when such disclosure is necessary to better serve the needs of the child and/or family and must be kept in a confidential manner by the provider unless otherwise authorized by law or ordered by the Court.
(Adopted 1/1/2008)

Rule 6.6.11

Disclosure of Delinquency Records to Victims of Crime

A. Unless otherwise ordered by the court, the DA may release the following information to the victim(s) of a crime committed by a juvenile offender:

1. information regarding the status of the case;

2. name(s) of the minor(s) ordered to pay restitution to the victim;

3. name(s) of the parent(s) or guardian(s) of any minor(s) ordered to pay restitution to the victim; and

4. the address of the minor and/or the parent or guardian, if the victim states that the address is necessary to collect restitution or to file a civil action.

The information is to be used by the victim only to collect restitution ordered by the juvenile court. Before receiving any information, the victim, or his or her representative, must sign the form entitled "Warning to Victims of Crimes by Juvenile Offenders."
(Adopted 1/1/2005; Renum. 1/1/2006)

CHAPTER 7
PROCEDURES FOR APPOINTING COUNSEL

Rule 6.7.1

Attorneys for Children

At the earliest possible stage of proceedings, the court must appoint counsel for the child as provided in Welfare & Institutions Code section 317 and California Rules of Court, rule 5.660. Appointed counsel and/or the

court-appointed special advocate (CASA) must continue to represent the child at all subsequent proceedings unless properly relieved by the court.

For the purposes of the Child Abuse Prevention and Treatment Act grants to states (Pub.L. No. 93-247), in all cases in which a dependency petition has been filed and counsel has been appointed for the child, the attorney for the child will be the guardian ad litem for the child in the dependency proceedings unless the court appoints another adult to serve as the child's guardian ad litem. If no counsel is appointed for the child, or if at any time the court determines a conflict exists between the role and responsibilities of the child's attorney and that of a guardian ad litem, or if the court determines it is best for the child to appoint a separate guardian ad litem, the court will appoint another adult as the guardian ad litem for the child. The guardian ad litem for the child may be any attorney or a CASA.

(Adopted 1/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2007)

Rule 6.7.2

Attorneys for Parents or Guardian(s)

At the detention or initial hearing, the court must appoint counsel for the mother and counsel for a presumed father as provided in Welfare & Institutions Code section 317 and California Rules of Court, rule 5.660. Appointed counsel will continue to represent the client at all subsequent proceedings unless properly relieved by the court.

(Adopted 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2008)

CHAPTER 8
PROCEDURES FOR DETERMINING APPROPRIATE CASELOADS FOR CHILDREN'S COUNSEL

Rule 6.8.1

Determining Appropriate Caseloads for Children's Counsel

The attorney for the child must have a caseload that allows the attorney to perform the full range of duties required by Welfare & Institutions Code section 317, subdivision (e), and California Rules of Court, rule 5.660, and to otherwise adequately counsel and represent each child.

Pursuant to Welfare & Institutions Code section 317, subdivision (g), if counsel is to be appointed for a child, the court must first utilize the services of the Public Defender. If there is a conflict of interest, then appointments are made to first- and second-level conflict offices.

The Public Defender utilizes a team approach which includes the use of skilled investigators who are trained and/or experienced in social work and child protection, paralegals who assist attorneys with routine legal work, and other clerical support. The Public Defender provides a team of professionals to represent children in each dependency court. Each court team consists, at a minimum, of an equal number of attorneys and investigators, legal assistants, and other clerical support. In addition, the Public Defender utilizes the assistance of law clerks from local law schools. With this structure, the Public Defender may carry an average attorney caseload of 400 children.

Conflict offices that do not utilize a team approach similar to that of the Public Defender may carry an average attorney caseload of 150 children unless a support structure is developed that will enable the conflict offices to carry a larger caseload.

(Adopted 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2008)

CHAPTER 9
JUVENILE DELINQUENCY PROCEEDINGS

Rule 6.9.1

Preliminary Provisions

Rule 6.1.1 applies equally to juvenile delinquency proceedings.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007)

Rule 6.9.2

Definitions, Construction of Terms

A. As used in these rules, unless the context or subject matter otherwise requires:

1. "Clerk" means the clerk of the juvenile court;

2. "Court" means the juvenile court, and includes any judge, commissioner, referee, or referee pro tem of the juvenile court, unless otherwise specified;

3. "CRC" refers to the California Rules of Court;

4. "D.A." means District Attorney;

5. "JPD" means the Juvenile Probation Department of the County of San Diego;

6. "Law Enforcement Agency" includes the San Diego County Sheriff's Department, all city police departments in San Diego County, and all school district police or security departments in San Diego County;

7. "Minor" or "child" means a person under the age of 18 years;

8. "PC" refers to the California Penal Code;
9. "P.O." means Probation Officer;
10. "WIC" refers to the California Welfare and Institutions Code.

B. Construction of terms:

1. "Shall" or "must" is mandatory; "may" is permissive;
2. The past, present, and future tenses include the others;
3. The singular and plural numbers include the other.

(Adopted 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008)

Rule 6.9.3

Assignment of Cases and Peremptory Challenges

The court assigns delinquency cases on an independent calendar system. Under that system, a delinquency case assigned to a particular judge, commissioner, or referee will remain with that judicial officer until the termination of jurisdiction, unless otherwise ordered. Under the independent calendar system, a peremptory challenge to any judge, commissioner, or referee must be made pursuant to Code of Civil Procedure section 170.6. Such a challenge must be made prior to any determination of contested issues of fact relating to the merits and within 10 days after notice of the assignment of the case to a specific judge, commissioner, or referee, or it will be deemed untimely. Notice of the assignment is complete upon service of such notice or initial appearance in court. The prosecution and the defense will each be allowed only one peremptory challenge per case. (This rule is adopted pursuant to *Daniel V. v. Superior Court* (2006) 139 Cal.App.4th 28.)
(Adopted 1/1/2005; Rev. 1/1/2007; Rev. 1/1/2008)

Rule 6.9.4

Continuances

Continuances of hearings will be granted only upon a showing of good cause and in accordance with the procedural requirements of Welfare & Institutions Code section 682 and California Rules of Court, rules 5.550 and 5.776. A continuance may be granted following a time waiver by the minor.
(Adopted 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008)

Rule 6.9.5

Ex Parte Applications and Orders

A. No party may submit an ex parte application to the court for an order unless it appears by affidavit or declaration that one of the following is true:

1. Within a reasonable time before the application, the party informed all other parties or their attorney(s) when and where the application would be made and provided a copy of the application and proposed order to the attorney(s).

2. The party in good faith attempted to inform all other parties or their attorney(s) of the application but was unable to do so, describing with particularity the efforts made to inform each party.

3. The party should not be required to inform all other parties or their attorney(s) for the reasons specified. The court in its discretion may choose to inform the other parties of the reasons specified in the ex parte application.

B. If the JPD files an ex parte application for an order terminating jurisdiction, the JPD must also serve notice thereof on the D.A. and minor's counsel. Any objection(s) must be submitted in writing to the court within ten court days of the filing of the application. Failure to timely submit a written objection constitutes a waiver of the objection. If a written objection is timely filed, the court will set a hearing on the application and serve notice of the hearing on all parties.

C. An ex parte report may be used to request modifications of previous orders that have been so stipulated, to correct or clarify orders, to get permission from the court to proceed in a certain manner with a case, to update information to the court, or to give the court additional information. Examples of matters that are appropriate for ex parte handling: funding orders that were not included in the original court order but that are essential to carry out the order; vacate orders that are no longer needed; 15-day reviews; permission for travel outside the county; termination of jurisdiction when it was previously stipulated that jurisdiction would terminate once the minor complied with specific orders.
(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 6.9.6

Requirements for Noticed Motions

A. All motion papers, opposition papers, and reply papers must be in writing and must display on the first page the motion hearing date, time, and department and a time estimate for the motion hearing.

B. Time for Service When the Minor is Detained. Unless a different briefing schedule is set by the court,

1. All moving papers must be filed and served on the opposing party at least 5 court days before the time appointed for the hearing.

2. All papers opposing the motion must be filed and served at least 2 court days before the time appointed for the hearing.

3. All reply papers must be filed and served at least 1 court day before the time appointed for the hearing.

C. Time for Service When the Minor is Not Detained. Unless a different briefing schedule is set by the court,

1. All moving papers must be filed and served on the opposing party at least 10 court days before the time appointed for the hearing.

2. All papers opposing the motion must be filed and served at least 5 court days before the time appointed for the hearing.

3. All reply papers must be filed and served at least 2 court days before the time appointed for the hearing.

D. Time for Service of Motion to Suppress Evidence. Unless a different briefing schedule is set by the court,

1. All moving papers must be filed and served on the opposing party at least 5 court days before the time appointed for the hearing.

2. All papers opposing the motion must be filed and served at least 2 court days before the time appointed for the hearing.

3. All reply papers must be filed and served at least 1 court day before the time appointed for the hearing.

E. Points and Authorities.

1. All moving and opposing papers must be accompanied by supporting points and authorities.

2. A memorandum of points and authorities must include a statement of the case and a statement of facts setting forth all procedural and factual matters relevant to the issue presented.

3. The memorandum of points and authorities must clearly specify the factual and legal issues raised and the specific legal authority relied upon for the motion.

4. Only the factual and legal issues set forth in the memorandum will be considered in the ruling on the motion unless it is established that the new issues were not reasonably discoverable before the motion was filed.

5. Failure of the moving party to serve and file points and authorities within the time permitted without good cause may be considered by the court as an admission that the motion is without merit.

6. Failure of the responding party to serve and file points and authorities within the time permitted without good cause may be considered by the court as an admission that the motion is meritorious.

7. In case of a failure of either party to serve and file points and authorities within the time permitted, the court may find good cause to continue the hearing.

F. Abandonment of Motions. Any party intending to abandon a motion already filed must immediately notify opposing counsel and the clerk of the department in which the motion is to be heard, and must also notify the clerk immediately if the case is disposed of by plea prior to the hearing or if the proceedings are suspended because the minor is found not to be competent.

G. Concession That Motion is Meritorious. If the responding party elects not to oppose the motion, respondent must immediately notify opposing counsel and the clerk of the department in which the motion is to be heard.

H. Length of Points and Authorities. No opening or responding memorandum of points and authorities exceeding 15 pages may be filed, absent an order from the judge of the court in which the motion is calendared. Such an order will be granted only upon a written application including a declaration setting forth good cause for the order.

(Adopted 1/1/2005; Rev. & Renum. 1/1/2006)

Rule 6.9.7

Fax Filing

Any document in a delinquency case may be filed by fax between 8:30 a.m. and 4.30 p.m. Monday through Friday. The fax number may be obtained by contacting the Juvenile Court Business Office. Fax filings must comply with the requirements of California Rules of Court, rule 5.522.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 6.9.8

Warrants

All warrants of arrest and juvenile detention orders, including those stored in electronic form, are deemed authenticated at the time a Juvenile Court judge issues an order authorizing the issuance of the arrest warrant or juvenile detention order.

(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 6.9.9

Reciprocal Discovery

The discovery provisions of Penal Code section 1054 et seq. apply to juvenile delinquency cases.

(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 6.9.10

Public and Media Access

In most cases, juvenile delinquency proceedings are presumed to be confidential and closed to the public. However, any person whom the court deems to have a direct and legitimate interest in a particular case or in the work of the court may be admitted. Furthermore, hearings concerning petitions that include any of the offenses listed in Welfare & Institutions Code section 676, subdivision (a) are presumptively open to the public. A request for media coverage must be submitted on form SDSC ADM-020 at least five court days before the hearing unless good cause for noncompliance is shown. Forms and copies of the Juvenile Court Media Policy are available from Juvenile Court Administration, which is in room 254 at the Meadow Lark courthouse. This rule is not meant to affect the rights of any victim or other person entitled by statute to be present. (See Welf. & Inst. Code, §§ 676.5, 679.)
(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 6.9.11

Competence and Mental Health Evaluations

Whenever a minor's competence or mental health is in doubt, an evaluation must be done as soon as possible after the delinquency case is initiated to determine whether the minor is incompetent or in need of emergency inpatient mental health services. When indicated, services must be provided in a timely manner. Requests for such evaluations must comply with the Juvenile Court's protocols for competence evaluations and court-ordered inpatient mental health evaluations.
(Adopted 1/1/2005; Rev. & Renum. 1/1/2006)

Rule 6.9.12

Administration of Psychotropic Medications

After a child is declared a ward of the court under Welfare & Institutions Code section 601 or 602 and removed, either temporarily or permanently, from the physical custody of his/her parent or guardian, only a Juvenile Court judicial officer is authorized to make orders regarding the administration of psychotropic medication to the child. The procedures and forms described in California Rules of Court, rule 5.640 apply in delinquency cases. Requests for orders for psychotropic medications for 601 and 602 wards must comply with the requirements of California Rules of Court, rule 5.640.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 6.9.13

Initial Health Screening

Prior medical authorization will not be required for the initial health screening of minors at Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility. Initial health screenings must be performed within 96 hours of detention and will include a physical examination, laboratory tests, immunizations, and X-rays. The Probation Department will attempt to obtain parental consent for medical care. If such consent cannot be obtained, the Probation Department will seek a court order authorizing medical care. In an emergency situation, medical care may be delivered to minors in detention without parental consent or a court order. (See Welf. & Inst. Code, § 739.)
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007)

Rule 6.9.14

Immunizations

All minors detained in the Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility, where medical records are unavailable and/or due diligence efforts are unsuccessful in locating a parent, guardian or other responsible adult relative, will receive all necessary immunizations against poliomyelitis, diphtheria, pertussis, tetanus, measles, rubella and mumps. Such immunizations are reasonable and necessary under section 120335 of the Health and Safety Code to enable attendance in school programs operated by Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility. All immunizations must be performed by a licensed health care provider.
(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 6.9.15

Sex Education

The Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility, in conjunction with the County Office of Education, the Department of Public Health, and approved community-based organizations, may conduct sex education classes as part of the education curricula for all minors detained in the Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility. These classes may include information on AIDS and its transmission.
(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 6.9.16

Off-Site Counseling

Any minor detained in the Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility pending acceptance by and delivery to a 24-hour institution may be transported from the Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility to the 24-hour institution for counseling or other rehabilitative treatment, provided the assigned probation officer consents to the off-site treatment.
(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 6.9.17

Travel Out of San Diego County

The Probation Department is authorized to grant permission to wards to travel out of the County of San Diego but within the State of California for trips of up to 72 hours. An ex parte order from the Juvenile Court is required for trips over 72 hours and/or outside the State of California.
(Adopted 1/1/2005; Renum. 1/1/2006)

APPENDIX A

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

JUVENILE DIVISION

CERTIFICATION OF COMPETENCY

I, _____,
Name office address telephone number

and an attorney at law licensed to practice in the State of California. My State Bar Number is _____. I hereby certify that I meet the minimum standards for practice before a Juvenile Dependency Court set forth in California Rules of Court, rule 5.660, and local rule Section Three, and that I have completed the minimum requirements for training, education and/or experience as set forth below. This is a [ ] new certification [ ] recertification.

[ ] Education and Training
(Attachment to explain and/or document)

[ ] Experience
(Attachment to explain and/or document)

[ ] Other
(Attachment to explain and/or document)

_____ _____
Dated Attorney Signature

_____ _____
Dated Approved by
Presiding Dependency Judge

DIVISION VII
APPELLATE

CHAPTER 1
GENERAL POLICIES AND PROCEDURES

Rule 7.1.1

Policy

The business of the Appellate Division of the San Diego Superior Court will be conducted in conformity with the applicable provisions of article VI, sections 4, 10 and 11 of the California Constitution, titles 8 and 10 of the California Rules of Court, applicable statutes and case law.
(Adopted 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 7.1.2

(Deleted and replaced with new 7.1.2)
(Adopted 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008; Del. 1/1/2009)

Rule 7.1.2

Filing of Appellate Briefs

In addition to the requirements of California Rules of Court, rule 8.882(d), all briefs submitted for filing must be accompanied by four copies. Each copy must include all attachments.
(Adopted 1/1/2009)

CHAPTER 2
WRIT PROCEDURES, POLICIES, AND PROTOCOL IN LIMITED CIVIL AND CRIMINAL CASES

Rule 7.2.1

Application of the California Rules of Court

For all petitions for extraordinary relief in limited civil, misdemeanor, and infraction cases which name San Diego Superior Court as respondent, wherever the San Diego Superior Court Rules do not provide specific guidance regarding the proper writ petition procedures, the provisions of the California Rules of Court, Title 8, Division 2, Chapter 6, Writ Proceedings, will apply.
(Adopted 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 7.2.2

Filing Requirements

A. All such petitions must be filed in the Central Division business office on the second floor of the Hall of Justice at 330 West Broadway, San Diego, California. No such petitions will be accepted for filing anywhere else. Unless otherwise ordered, any subsequent pleadings and papers in the same matter must be filed in the same office.

B. All such petitions will be assigned civil case numbers.

C. No filing fee will be required when a petition arises from a criminal case.

D. The petitioner or counsel for the petitioner is required to submit one original and four copies of the petition. Each copy of the petition must include all supporting documents specified in California Rules of Court, rule 8.931(b). This court has not adopted a local rule permitting the use of electronic recordings of oral proceedings. Transcripts of such recordings are required if they are available.
(Adopted 1/1/2000; Rev. 1/1/2001; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 7.2.3

Request for Stay

If a stay of the trial court proceeding is requested in the writ petition, the petition must so state prominently on the title page. The petition must set forth all time constraints which are relevant to the request for stay.
(Adopted 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 7.2.4

Deleted
(Adopted 1/1/2000; Rev. 1/1/2001; Renum. 7/1/2001; Renum. 1/1/2006; Del. 1/1/2009)

DIVISION VIII
MENTAL HEALTH COURT

CHAPTER 1
COURT, LOCATIONS, VENUE, PROCEDURES

Rule 8.1.1

Mental Health Court

The Mental Health Court is located in one of the departments in the Central Division of the San Diego Superior Court and constitutes the Mental Health Division of the Superior Court. The Mental Health Court hears the categories of matters addressed in these rules and such other categories of matters as may be assigned by the Presiding Judge. Generally, a matter set for trial will not be assigned to the Mental Health Court.
(Adopted 7/1/2006)

Rule 8.1.2

Mental Health Court Judge

A. All references in these rules to the Mental Health Court judge means the judge designated to preside over the Mental Health Division of the San Diego Superior Court.

B. Upon a showing of good cause, the Mental Health Court judge may issue orders at variance with these rules.
(Adopted 7/1/2006)

Rule 8.1.3

Addresses and Telephone Numbers of the Mental Health Court

San Diego Superior Court:
Mental Health Court (as designated by the Presiding Judge)
220 West Broadway
San Diego, California 92101

Mental Health Desk:
Clerk, San Diego Superior Court, Room 2005
220 West Broadway
San Diego, California 92101
(619) 450-5700

Public Conservator:
3851 Rosecrans St., Room G-32
San Diego, California 92110
(619) 692-5664

Attorney for Public Conservator
Office of the County Counsel
1600 Pacific Highway, Room 355
San Diego, CA 92101, USA
(619) 531-4860

Public Defender's Office
233 A Street, Suite 800
San Diego, CA 92101
(619) 338-4700

(Adopted 7/1/2006)

Rule 8.1.4

Venue

A. Addressed in Moving Papers. To be accepted for filing with the court, a petition or motion subject to the rules of this division must present facts that show that San Diego Superior Court is the proper venue for hearing the petition or motion.

B. Change of Venue. A motion for a change of venue must be filed with the Mental Health Desk clerk. The request must include a declaration of counsel presenting the reasons why a change of venue is required.

(Adopted 7/1/2006)

Rule 8.1.5

Pleadings

A. Caption. The caption of a petition and all other papers must be all-inclusive regarding the relief sought in the petition or papers so that the matter may be properly calendared. The court clerk at the Mental Health Desk is not required to read the body of the petition or other papers to determine the scope of the filed petition or other papers.

B. Use of Printed Forms. The court prefers that counsel use the latest version of the printed forms approved by the Judicial Council. If a form cannot be used, counsel must prepare their own documents using a preferred form as a guide. Forms are available through the court clerk at the Mental Health Desk.

C. Verification. All papers which require verification must be verified in substantially the following manner:

> I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this (name of document) is executed on (date).
>
> (signature)
> (name typed)

D. A petition, motion, and all other papers concerning the matters for the Mental Health Court must be filed with the court clerk at the Mental Health Desk.

(Adopted 7/1/2006)

Rule 8.1.6

Notice, Written

A. Required. Unless specifically excepted by these rules, all matters presented to the Mental Health Court must be preceded by written notice served on the party affected and the attorney of record of the party affected.

B. Form of Notice. All written notices must substantially comply with the requirements of Probate Code section 1200 et seq. The notice must contain the time, date and place of hearing.

C. Timing of Written Notices. All written notices, except as otherwise required by this division, must be served in accordance with the time limits prescribed by Probate Code section 1460.

D. Service of Notice – General. A declaration of service for any written notice required by statute must be completed and filed with this court. The declaration must comply with Code of Civil Procedure section 1013, subdivision (a), but need not be accompanied by a copy of the notice so long as the original notice is on file and is clearly identified in the declaration of service.

(Adopted 7/1/2006)

Rule 8.1.7

Notices Other than Written

A. Except as to written notices required by statute or these rules, verbal notice must be provided to affected parties or their attorney and expert witnesses (if appearance is required) for any of the following actions:

1. Waiver of the presence of the expert;
2. Forensic examination by County-employed psychiatrists;
3. Inability or unwillingness of any conservatee to attend;
4. Termination of a temporary conservatorship;
5. Any ex parte matter other than the establishment of a temporary conservatorship.

B. The notice required by this rule may be given by any means, including telephone. This notice must be given not less than one working day before the matter will be submitted to the court or the forensic examination is to occur. Where a decision to file for an appointment or termination of a temporary conservator is made less than one day before filing, notice must be given immediately after the decision to file. When a conservatee is unable or unwilling to attend a hearing and such inability or unwillingness is

not made apparent in adequate time to allow for one working day notice, then notice must be given immediately after the conservatee is found to be unable or willing to attend.
(Adopted 7/1/2006)

Rule 8.1.8

Hearing Once Notified Cannot be Advanced

When a hearing on a Mental Health matter has been noticed, or when it has been noticed and then continued to a definite date, the matter cannot be heard before the date set, either by means of a new petition, an amended petition, or by a new notice, unless so ordered by the court.
(Adopted 7/1/2006)

Rule 8.1.9

Preparation of Order or Judgment

A copy of any proposed order or judgment must be submitted to opposing counsel before presentation to the judge rendering the order or judgment. A conformed copy of such order must be sent to opposing counsel.
(Adopted 7/1/2006)

CHAPTER 2
LPS CONSERVATORSHIP

Rule 8.2.1

"Conservator"

A. As used in this Division, "conservator" is a reference to the person appointed by the Mental Health Court to serve as conservator, and includes a person appointed as a temporary conservator, an interim conservator, or a successor conservator.

B. The conservator is responsible for ensuring that the conservatee appears in court for any scheduled hearings requiring the conservatee's presence. This responsibility includes obtaining the necessary transportation.
(Adopted 7/1/2006)

Rule 8.2.2

"Conservatee"

As used in this Division, "conservatee" is a reference to the person subject to LPS proceedings and includes a proposed conservatee and a conservatee under a temporary conservatorship.
(Adopted 7/1/2006)

Rule 8.2.3

Calendar Call

A. Subject to court discretion, conservatorship cases on the regular calendar will be heard in the following order:

1. Stipulation matters read into the record;
2. Uncontested matters;
3. Contested conservatorships;
4. Writs of habeas corpus; and
5. Petitions to authorize medical treatment, medication (Riese) hearings or appeals, and electroconvulsive treatment.

B. A matter is considered to be contested if an issue is in question.
(Adopted 7/1/2006)

Rule 8.2.4

Service-Proof of Service

Service of any notice on a conservatee must be done in accordance with Welfare and Institutions Code sections 5000 et seq., or Probate Code section 1200 et seq. where no method appears in the Welfare and Institutions Code. Service on any attorney may be made in accordance with Code of Civil Procedure section 1011 or 1012.
(Adopted 7/1/2006)

Rule 8.2.5

Subpoenas

Subpoenas and subpoenas duces tecum regarding LPS conservatorships and related matters must be issued in accordance with Code of Civil Procedure section 1985 et seq., provided the provisions for maintaining confidentiality, as contained in Welfare and Institutions Code section 5328, are not violated.
(Adopted 7/1/2006)

Rule 8.2.6

Establishment of Conservatorship – A Referral Initiates The Establishment Procedure

A. To initiate the procedure for establishing a conservatorship, a psychiatrist and/or a licensed clinical psychologist must prepare a report (referral) which presents a factually supported conclusion that the proposed conservatee is a proper subject of a Lanterman-Petris-Short Act conservatorship.

B. The preparer of the referral must submit the referral to the Public Conservator.

(Adopted 7/1/2006)

Rule 8.2.7

Establishment of Conservatorship – Preparation and Filing of Petition

If, after reviewing the referral, the Public Conservator determines to initiate the procedures for establishing a conservatorship, the Public Conservator must:

A. Prepare and file with the court clerk at the Mental Health Desk a petition for establishment of an LPS conservatorship and obtain a hearing date; and

B. Serve a copy of the petition on the counsel for the proposed conservatee no less than 15 court days prior to the hearing on the petition.

(Adopted 7/1/2006)

Rule 8.2.8

Establishment of Conservatorship - Temporary Conservatorship

A. At the time of filing a petition for establishment of an LPS conservatorship, the Public Conservator may, in accordance with Welfare and Institutions Code section 5352.1, request an order of the Mental Health Court establishing a temporary conservatorship which includes the appointment of a temporary conservator.

B. Good cause for establishing a temporary conservatorship can be based on declarations of professional persons recommending the conservatorship.

(Adopted 7/1/2006)

Rule 8.2.9

Establishment of Conservatorship - Notice of Temporary Conservatorship

Within five working days of the establishment of the temporary conservatorship, the Public Conservator must mail to the temporary conservatee a copy of the order appointing a temporary conservator.

(Adopted 7/1/2006)

Rule 8.2.10

Establishment of Conservatorship – Term of Temporary Conservatorship

A. All temporary conservatorships expire automatically at the conclusion of 30 days.

B. When a hearing to establish a permanent conservatorship is continued, the temporary conservatorship will automatically continue to be in effect until the date of continuance, subject to one of the parties presenting an objection to the court and the court ruling otherwise.

(Adopted 7/1/2006)

Rule 8.2.11

Establishment of Conservatorship – Preparation of Conservatorship Investigation Report

A. If the Public Conservator determines to initiate the procedures for establishing a conservatorship, the Public Conservator:

1. Shall, as the Welfare and Institutions Code section 5352 "officer providing conservatorship investigation," prepare the conservatorship investigation report; and

2. Shall serve the conservatorship investigation report on the counsel for the proposed conservatee no less than five court days prior to the hearing on the petition.

B. If the conservatorship investigation report refers to any written evaluation or report prepared by a physician, psychologist, social worker, nurse or other professional person, the conservatorship investigation report must identify such evaluation or report with sufficient specificity to allow the attorney of record for the proposed conservatee the opportunity to view or subpoena such document. Identification may be accomplished by specifying such things as: the date of the report; the name and title of the person preparing the report; or the facility/organization with which the preparer is affiliated.

(Adopted 7/1/2006)

Rule 8.2.12

Establishment of Conservatorship – Hearing - Waiver of Presence of Physician

The presence of a physician at the hearing on the petition to establish a conservatorship may be excused in advance of the date of the hearing by stipulation between the Public Conservator and the

attorney for the proposed conservatee. Thereafter, if it is determined that the presence of the physician is required, the Mental Health Court will continue the hearing.
(Adopted 7/1/2006)

Rule 8.2.13

Establishment of Conservatorship - Hearing - Conservatee Unable or Unwilling to Attend Hearing

At any conservatorship hearing conducted under Division 8, Chapter 2, the Mental Health Court may, in its discretion, proceed in the absence of the conservatee if counsel for the conservatee: (1) requests the court to waive the conservatee's presence, (2) represents to the court that there has been contact with the conservatee, and (3) states that, in the attorney's opinion, it is not in the best interests of the conservatee-client to be present in court or for the court to convene where the conservatee is then housed.
(Adopted 7/1/2006)

Rule 8.2.14

Establishment of Conservatorship - Hearing – Evidence (Conservatorship Referral Document)

Upon stipulation of the parties, the written conservatorship referral prepared by a psychiatrist and/or a licensed clinical psychologist who is on the staff of a Lanterman-Petris-Short Act approved facility may be received into evidence.
(Adopted 7/1/2006)

Rule 8.2.15

Establishment of Conservatorship – Hearing – Evidence (Conservatorship Investigation Report)

Under the Welfare and Institutions Code, the conservatorship investigation report is admissible into evidence at the hearing.
(Adopted 7/1/2006)

Rule 8.2.16

Establishment of Conservatorship - Hearing - Appointment of Conservator

A. The order imposing a conservatorship must include the appointment of a conservator.

B. The Mental Health Court will appoint co-conservators only under unusual circumstances where it has been demonstrated to the court that the appointment of a co-conservator is necessary and is in the best interests of the conservatee.

C. Within ten working days of the appointment, the conservator must send notice to the conservatee of the establishment of the conservatorship. The notice must include the name, address and telephone number of the conservator. Where the conservator is a public official, the notice must include the name and telephone number of the social worker assigned to the case.
(Adopted 7/1/2006)

Rule 8.2.17

Establishment of Conservatorship - Preparation of Orders

The petitioner must prepare all necessary orders required in the establishment of the conservatorship and appointment of a conservator.
(Adopted 7/1/2006)

Rule 8.2.18

Conservator – Request To Be Relieved

When, for any reason, a conservator seeks to be relieved, the court may appoint a successor conservator pursuant to Probate Code section 2680 et seq. The successor conservator must notify the conservatee of the appointment.
(Adopted 7/1/2006)

Rule 8.2.19

Conservator – Successor By Operation of Law

Where the Public Conservator is appointed to serve as conservator, a successor to the office will, by operation of law, be deemed the successor conservator.
(Adopted 7/1/2006)

Rule 8.2.20

Conservator, Private – Relief For Non-Performance - Appointment of Interim Conservator

A. Where there is evidence that a private conservator is not able to perform the duties or responsibilities of conservator, the Public Conservator may petition the court: (1) to relieve temporarily the

current conservator; and (2) to make an interim appointment of the Public Conservator to serve as conservator pending further investigation of the conservatorship.

B. If good cause is shown and the court temporarily relieves the private conservator, the court will (1) direct the Public Conservator to conduct an investigation; and (2) set a hearing date to consider the Public Conservator's report and take necessary action concerning the conservatorship.
(Adopted 7/1/2006)

Rule 8.2.21

Rehearing - Time for Filing

A. An initial petition requesting a rehearing may be filed by the conservatee or the conservatee's attorney at any time.

B. Pursuant to Welfare and Institutions Code section 5364, after the filing of the first petition for rehearing, no further petition for rehearing may be submitted for a period of six months.
(Adopted 7/1/2006)

Rule 8.2.22

Rehearing – Issues Raised – Burden Of Proof

A. Grave Disability. A rehearing on the issue of whether the conservatee remains "gravely disabled" is governed by Welfare and Institutions Code section 5364**.** The burden of proof is upon the conservatee to establish, by a preponderance of the evidence, that the conservatee is no longer gravely disabled as defined in Welfare and Institutions Code section 5008, subdivision (h).

B. Rights of Conservatee. Rehearings on the issue of the powers conferred on the conservator or the rights denied the conservatee under Welfare and Institutions Code sections 5357 and 5358 are governed by Welfare and Institutions Code section 5358.3. The burden of proof is on the conservatee to show by a preponderance of the evidence why a right should be restored.

C. Conservator's Authority Over Routine Medical Treatment. Under the terms of the conservatorship, where the conservatee has retained the right to make medical decisions unrelated to remedying or preventing the recurrence of the conservatee being gravely disabled, the conservator may petition the court for a rehearing on this issue where the treating physician and the conservator have reason to question the ability of the conservatee to give informed consent to medical treatment.
(Adopted 7/1/2006)

Rule 8.2.23

Rehearing - Procedure

A. Form and Content of Petition. The petition for rehearing must: (1) specifically state whether it is brought pursuant to Welfare and Institutions Code section 5364 or section 5358.3, or both; and (2) specifically state the basis for the proposed change; and (3) the present the filing and hearing dates of all previous rehearing petitions filed on behalf of the conservatee during the current one year term of the conservatorship.

B. Setting Date For Hearing. The court clerk at the Mental Health Desk will set the date for hearing the petition for rehearing within 30 days of the filing of the petition, as required by Welfare and Institutions Code section 5365.

C. Notice. The petitioner for rehearing must: (1) obtain from the court clerk at the Mental Health Desk the date set for hearing the petition for rehearing; and (2) at least 15 days prior to the hearing, serve the petition and notice of the hearing date on the conservator and all relatives of the conservatee within the second degree.

D. No Right To Jury. There is no right to a jury trial for a rehearing.
(Adopted 7/1/2006)

Rule 8.2.24

Rehearing – Order – Preparation

A. The order will be prepared by the Public Conservator. If the matter involves a private conservator, the order will be prepared by the petitioner for rehearing.

B. If the order restores the right to vote (Elec. Code, § 2210, subd. (c)), the order will expressly identify the restoration of the right to vote and a copy of the order must be served on the Registrar of Voters.
(Adopted 7/1/2006)

Rule 8.2.25 – 8.2.30 [reserved]

Rule 8.2.31

Re-Establishment of Conservatorship – Notice Of Expiration

No less than 60 days prior to the expiration of the one-year period of the conservatorship, the court clerk at the Mental Health Desk will send notice of the pending expiration to: (1) the conservator, (2) if a

private conservator, then also the Public Conservator, (3) the conservatee, (4) the conservatee's attorney, and (5) the facility wherein the conservatee resides.
(Adopted 7/1/2006)

Rule 8.2.32

Re-Establishment of Conservatorship - Petition

A. Filing. To re-establish a conservatorship, the conservator must, no less than 30 days prior to the date of scheduled termination, (1) prepare and file with the court clerk at the Mental Health Desk a petition to re-establish the conservatorship, and (2) obtain a hearing date.

B. Calendaring of Hearing. Upon receipt of the original and two copies of the request for hearing, the court clerk at the Mental Health Desk will immediately calendar a hearing on the matter to be heard no less than 21 days nor more than 30 days from the date of filing of the written request.

C. Service of Petition. No less than 15 days prior to the date of the hearing to re-establish the conservatorship, the conservator must serve, personally or by first class mail, postage prepaid, a copy of the petition and notice of the hearing date on: (1) if a private conservator, then on the Public Conservator, (2) the conservatee, (3) the conservatee's attorney, and (4) the facility wherein the conservatee resides.
(Adopted 7/1/2006)

Rule 8.2.33

Re-Establishment of Conservatorship - Consent to Re-Establishment

The conservatee, or the attorney for the conservatee, may stipulate to the re-establishment of the conservatorship.
(Adopted 7/1/2006)

Rule 8.2.34

Re-Establishment of Conservatorship – Hearing Procedures

The hearing on the petition to re-establish the conservatorship will be conducted in accordance with the rules applicable to a hearing on a petition to establish a conservatorship.
(Adopted 7/1/2006)

Rule 8.2.35

Re-Establishment of Conservatorship – Termination of Conservatorship

A. By Expiration or Denial Of Petition. The conservatorship is terminated: (1) if no petition to re-establish the conservatorship is timely filed; or (2) the court denies the petition to re-establish the conservatorship.

B. Order. If the conservatorship is terminated, the Public Conservator must prepare the order terminating the conservatorship and file it with the court. If the matter involves a private conservator, the private conservator must prepare the order terminating the conservatorship and file it with the court.

C. Notice of Order. The court clerk at the Mental Health Desk will, by first class mail, send a copy of the order of termination to the conservator, the conservatee, and the conservatee's attorney.
(Adopted 7/1/2006)

Rule 8.2.36 – 8.2.40 [reserved]

Rule 8.2.41

Early Termination of Conservatorship – By Conservator's Request

The conservator may file a request for early termination of conservatorship prior to expiration of the one-year expiration date when:

A. The conservatee has reached treatment goals; and /or

B. The conservatee is no longer considered gravely disabled; and/or

C. The conservatee's whereabouts are unknown.
(Adopted 7/1/2006)

Rule 8.2.42

Early Termination of Conservatorship – By Conservatee's Request

The conservatee may move the court for an order terminating conservatorship prior to expiration of the one-year expiration date by scheduling a hearing and noticing the conservator of same in accordance with the provisions in the Rehearing section of these rules.
(Adopted 7/1/2006)

Rule 8.2.43

Early Termination of Conservatorship – Procedure

A. By Ex Parte Order. Termination may be effected by ex parte order upon proper notice as herein provided and Probate Code section 1862.

B. Hearing upon Notice. Early termination for reasons other than those stated above require a noticed hearing in accordance with the procedures outlined in the sections of these Rules related to "Notices" and "Reappointment of Conservator".

C. Service of Notice. The attorney must be given verbal notice of any early termination of conservatorship, and if objection to the termination is raised, the matter will be calendared for hearing, and notice will be given in accordance with the procedures outlined in "Notices" and "Reappointment of Conservator" in these rules.

D. Termination Without Objection. If no objection to termination is made, then the conservatorship may be terminated by the court.
(Adopted 7/1/2006)

Rule 8.2.44 - 8.2.50 [reserved]

Rule 8.2.51
Jury Trial - Request

A. Verbal Request for Jury Trial. When requesting a jury trial, the conservatee's attorney must give verbal notification to the conservator and conservator's attorney. Such notice must be either in open court when the request is made at the hearing or telephonically on the date the request is filed. If notice is to County Counsel it may be made to the deputy assigned to the Mental Health Court, Office of County Counsel, (619) 531-4860, and to the Calendar Division of the San Diego Superior Court.

B. Written Notice of Trial Date. On the date that a jury trial is requested, the conservatee's attorney must serve, by mail, a copy of a written notice of jury trial date form on the conservator's attorney. The notice of jury trial date form must include the conservatee's name, the case number, the attorney's name, address, telephone number, the date of the request and the scheduled date of the jury trial.

C. Setting Trial Date. The date of the jury trial will not be set beyond the 10 plus 15 day limit set forth in Welfare and Institutions Code section 5350, subdivision (d). However, if the written demand for jury trial contains written approval of the requested trial date by the person for whom the conservatorship is sought, petitioner for the conservatorship, or his or her attorney, then the trial may be set beyond the 10 plus 15 day limit set forth in Welfare and Institutions Code section 5350, subdivision (d).
(Adopted 7/1/2006)

Rule 8.2.52
Jury Trial – Request Withdrawn

A. By Conservatee. When a jury trial request is to be withdrawn by the conservatee, the conservatee's attorney must make the request either (1) in open court or (2) by a written declaration filed with the court and served on the conservator's attorney. Telephone notification that the request is to be withdrawn must be given to the conservator's attorney as soon as possible and to the Calendar Division of the San Diego Superior Court.

B. By Conservator. When a petition is to be withdrawn by the conservator, the regular procedures for terminating conservatorships will be followed. Conservator's attorney must give telephonic notification to the conservatee's attorney as soon as possible.
(Adopted 7/1/2006)

Rule 8.2.53
Post Verdict Matters

A. For Conservatee. If the verdict favors the conservatee, the conservatorship, if any, will be terminated forthwith.

B. For Conservator Imposing Disabilities and Setting Placement.

1. If a prior hearing was held, a conservator appointed, disabilities imposed and placement set and not vacated, then that order will remain in effect after the jury trial.

2. If there is no prior valid order appointing a conservator, fixing disabilities and placement, then the trial judge will appoint the conservator and fix the disabilities and placement in accordance with the recommendations of the Public Conservator, in the absence of evidence to the contrary.

If the conservatee requests the presence of the treating psychiatrist, forensic psychiatrist or conservator for the hearing on appointment of a conservator, the conservatee may at any time within five court days after the hearing, file a written hearing request in accordance with these rules. The hearing will be held in the Mental Health Division of the San Diego Superior Court; and the order of the trial court will remain in effect unless modified or vacated at that hearing.

C. Judgment. The prevailing party will prepare and submit a proposed judgment to the trial court.
(Adopted 7/1/2006)

CHAPTER 3

AUTHORIZATION FOR CONSERVATOR TO CONSENT TO MEDICAL/SURGICAL TREATMENT FOR CONSERVATEE

Rule 8.3.1

Authority For Conservator

A. General Authority – Routine Treatment. Pursuant to Welfare and Institutions Code section 5358, subdivision (b), the court may authorize the conservator to consent to any treatment for the conservatee which the treating physician recommends as being "routine medical treatment." With this general authority, the conservator has the right to consent to, and thus require the conservatee to receive, the recommended, routine treatment.

B. Specific Authority - Routine Treatment. If the conservator does not have general authority pursuant to Welfare and Institutions Code section 5358, subdivision (b), and the treating physician has recommended a routine treatment to which the conservatee has not consented, then, to obtain authority to consent to conservatee receiving the recommended, routine treatment, the conservator must file a petition.

C. Specific Authority - Non-Routine Treatment. In all cases, when the treating physician is recommending treatment that is more invasive or intrusive than "routine medical treatment," such as surgery or amputation or a procedure that poses a substantial risk to the life of the conservatee, and the conservatee has not consented to the treatment, then, to obtain authority to consent to conservatee receiving the recommended, non-routine treatment, the conservator must file a petition.

D. Specific Authority – Questioned Treatment. In discharging the duty to protect the welfare of the conservatee, the conservator may file a petition to obtain authorization to consent to a recommended medical treatment when:

1. The conservatee, relatives, or other persons the conservator has previously identified expressed opposition to the proposed procedure; or

2. The conservator has substantial questions as to whether the procedure should be performed.

(Adopted 7/1/2006)

Rule 8.3.2

Obtaining Authority For Medical Treatment

A. Petition. Authorization for the conservator to consent to specific medical/surgical treatment must be sought by the conservator filing a petition. The Petition must be accompanied by

1. A written statement signed under penalty of perjury by the treating physician which identifies the recommended treatment and the basis for the recommendation; or

2. A form which includes the information as referenced in Probate Code section 2357.

B. Submission of Petition Ex Parte. Where the conservator already possesses general authority to consent to routine, medical treatment, the petition may be submitted ex parte to the court under the following circumstances:

1. The conservator, in good faith, based on medical advice, determines that the proposed procedure is required;

2. The conservatee personally or through counsel, has expressly (a) waived a hearing and (b) declared non-opposition to the proposed procedure; and

3. Relatives, friends or other persons the conservator has previously identified have expressly supported the proposed procedure.

C. Submission of Petition. Except as provided herein, the petition must be filed with that clerk at the Mental Health Desk who will calendar the motion. The conservator must provide notice to the conservatee.

(Adopted 7/1/2006)

Rule 8.3.3

Hearing on Petition

The court may convene the hearing at the facility providing treatment and care of the conservatee when the conservator or conservatee provide evidence to the court that:

A. Transporting the conservatee to court would (1) be physically injurious for the conservatee; or (2) create a substantial threat of harm to the conservatee or others; or

B. It would be in the best interests of the conservatee to have the hearing conducted at the facility providing the treatment and not at the courthouse.

(Adopted 7/1/2006)

Rule 8.3.4

Notice

As referenced in Welfare and Institutions Code section 5358.2, notice to the conservatee means verbal notice.
(Adopted 7/1/2006)

Rule 8.3.5

Transportation

The conservator is be responsible for all necessary notice and arrangements for court hearings, and must coordinate transportation of the conservatee to said hearings.
(Adopted 7/1/2006)

Rule 8.3.6

Emergency Treatment

Nothing in these rules in any way impedes or affects other provisions of the law relating to emergency medical treatment, or emergency cases in which the conservatee faces loss of life or serious bodily injury. Under such cases, treatment may be provided as stipulated elsewhere in the law.
(Adopted 7/1/2006)

CHAPTER 4
ELECTROCONVULSIVE TREATMENT

Rule 8.4.1

Conditions for Administering

Electroconvulsive treatment may be administered to an involuntary patient pursuant to Welfare and Institutions Code section 5326.7 and to a voluntary patient pursuant to Welfare and Institutions Code section 5326.75 consistent with these rules.
(Adopted 7/1/2006)

Rule 8.4.2

Attorney's Consent to Patient's Capacity

The patient's attorney is authorized to agree to the patient's capacity or incapacity to give written informed consent pursuant to Welfare and Institutions Code section 5326.7. If the patient's attorney and physician agree that the patient has the capacity to give written informed consent, such agreement must be documented in the patient's records. The attorney's consent must be obtained for additional treatments in number or time, not to exceed 30 days.
(Adopted 7/1/2006)

Rule 8.4.3

Filing Petition

If either the attending physician or the attorney believes that the patient does not have the capacity to give informed consent, either the attorney or the attending physician must file a petition in the Mental Health Court to determine the patient's capacity to give consent.
(Adopted 7/1/2006)

Rule 8.4.4

Patient’s Attorney – Declaration Concerning Conflict of Interest

The attorney representing the patient may file a declaration with the court, prior to or at the time of the hearing, stating the reasons why the court should find that there is no conflict of interest in the attorney's representation of the patient. A copy of said declaration must be made available to county counsel by the attorney filing the declaration.
(Adopted 7/1/2006)

Rule 8.4.5

Treating Physician - Declaration Concerning Treatment

The physician recommending the treatment must submit to the court a declaration that states the conditions for administering electroconvulsive treatment as referenced by section 5326.7 of the Welfare and Institutions Code have been satisfied.
(Adopted 7/1/2006)

Rule 8.4.6

Change of Patient's Condition

If the court determines that the patient does have the capacity to give written informed consent, a subsequent petition may not be filed unless it can be shown by facts stated in the petition that the patient's

condition has changed since the court made the finding and that as a result of the changed condition, the patient does not have capacity to give a written informed consent.
(Adopted 7/1/2006)

Rule 8.4.7

Appointment of Temporary Conservator

If the court determines that the patient does not have the capacity to give written informed consent and there is no responsible relative or conservator of the patient available, the court may appoint the Public Counselor as temporary conservator. Such appointment may be made on the basis of testimony of the professional person representing the LPS approved facility, that the patient has a mental disorder and is gravely disabled and that said professional person intends to file a conservatorship referral recommending conservatorship. In cases where the patient is found to be a danger to self and/or others but not gravely disabled, the court may appoint the Public Counselor as guardian ad litem for purpose of giving consent to convulsive treatment.
(Adopted 7/1/2006)

CHAPTER 5
DETERMINATION OF CAPACITY OF MENTAL HEALTH PATIENTS TO GIVE OR WITHHOLD INFORMED CONSENT TO ADMINISTRATION OF ANTIPSYCHOTIC MEDICATION (RIESE HEARING)

Rule 8.5.1

Scope and Purpose

The following procedures are intended to implement the requirements of *Riese v. St. Mary's Hospital* (1988) 209 Cal.App.3d 1303, and Welfare and Institutions Code section 5332 et seq. They apply to patients, both adults and minors, who are being treated in public or private hospitals, and are being detained pursuant to Welfare and Institutions Code sections 5150 (72-hour hold), 5250 (14-day hold) or 5350 et seq. (temporary conservatorship).

Generally, the hearing is conducted at the facility where the patient is being treated; and any appeal of the hearing officer’s decision in heard by the Mental Health Court.
(Adopted 7/1/2006)

Rule 8.5.2

Petition

When the treating physician has determined that treatment of the patient's condition requires the administration of antipsychotic medication and the patient has refused to consent to the medication, the treating physician may petition the court for a legal determination as to whether the patient is capable of giving or withholding informed consent.
(Adopted 7/1/2006)

Rule 8.5.3

Required Documents

To obtain determination of the patient's capacity to give or withhold informed consent to treatment by antipsychotic medication, the treating physician must complete, sign and date the "Petition of Treating Physician Regarding Capacity to Consent or Refuse Antipsychotic Medication." If the physician will not be present for the hearing, the petition must have attached to it a "Treating Physician's Declaration Regarding Capacity to Consent to or Refuse Antipsychotic Medication" form. These forms must be delivered to, faxed to the Office of Counselor in Mental Health in order to calendar a hearing.
(Adopted 7/1/2006)

Rule 8.5.4

Calendaring Hearings

It is assumed that time is of the essence in each Riese hearing. The physician or treating facility must deliver or fax the required documents in order to calendar a hearing. The Office of the Counselor in Mental Health will calendar all hearings upon receipt and filing of the requisite forms. Whenever possible, the hearing will be set within two court days. The physician or treating facility must notify the Office of the Counselor in Mental Health of the need for an interpreter when one is needed at the hearing.
(Adopted 7/1/2006)

Rule 8.5.5

Attorney Duties

The patient's attorney must meet with the patient as far in advance of the hearing as possible to determine the patient's position with respect to the proposed antipsychotic medication. If the patient consents to the administration of antipsychotic medication prior to the hearing, it is the responsibility of the patient's attorney to notify the office of the Counselor in Mental Health promptly so the hearing may be canceled and unnecessary travel and expense may be avoided.
(Adopted 7/1/2006)

Rule 8.5.6

Appointment of Hearing Officers

The San Diego Superior Court Executive Officer will appoint attorneys as Hearing Officers to conduct the evidentiary hearings.
(Adopted 7/1/2006)

Rule 8.5.7

Treating Physician/Facility Representative

Physicians and treating facilities may, but need not be formally represented by counsel. The physician or a facility representative must present the petition and declaration as well as any verbal or documented evidence at the time of the hearing. The facility representative must be a psychiatrist, psychologist, registered nurse, or a social worker with at least a master's degree. Although it is not required that the treating physician testify, it should be recognized that the absence of the treating physician may leave insufficient evidence of incapacity in the event the petition and declaration are deficient.
(Adopted 7/1/2006)

Rule 8.5.8

Surroundings of Hearing

Hearings must be held in surroundings which allow for quietness and a reasonable degree of confidentiality and safety. Whenever possible, the hearings will be held at the facility where the patient is located. In any event the hearing will be held as close to the facility as is practicable under the circumstances. Hearings will be electronically recorded.
(Adopted 7/1/2006)

Rule 8.5.9

Burden of Proof

The burden is on the physician or treating facility to establish by clear and convincing evidence that the patient is incapable of giving or withholding informed consent to the administration of antipsychotic medication.
(Adopted 7/1/2006)

Rule 8.5.10

Determination of Capacity

In determining the patient's capacity to give or withhold informed consent, the judge or hearing officer will consider (1) whether the patient is aware of their mental condition, (2) whether the patient has been informed of and is able to understand the benefits and the risks of, as well as the alternatives to, the proposed medication and (3) whether the patient is able to understand and to knowingly and intelligently evaluate the information required to be given patients whose informed consent is sought (Welf. & Inst. Code, § 5326.2) and otherwise participate in the treatment decision by means of rational thought processes.
(Adopted 7/1/2006)

Rule 8.5.11

Patient Presence

The patient has the right to be present at the hearing and at any appeal hearing and to present evidence and to cross-examine witnesses at the hearing and appeal hearing. However, the patient may choose not to attend the hearing or the appeal hearing.
(Adopted 7/1/2006)

Rule 8.5.12

Access to Records

The hearing officer and the Mental Health Court judge have access to and may consider the relevant medical records of the patient as well as the petition and declaration of the physician in reaching the legal determination of the patient's capacity to give or withhold informed consent.
(Adopted 7/1/2006)

Rule 8.5.13

Continuance of Hearings

Upon a showing of good cause and at the discretion of the judge or hearing officer, a hearing may be continued for a reasonable amount of time.
(Adopted 7/1/2006)

Rule 8.5.14

Determination

At the conclusion of the hearing, the hearing officer or judge will make a legal determination whether the patient is capable of giving or withholding informed consent to the administration of antipsychotic medication.
(Adopted 7/1/2006)

Rule 8.5.15

Confidentiality

The proceedings under these rules and all records of these proceedings are confidential as provided in Welfare and Institutions Code section 5328.
(Adopted 7/1/2006)

CHAPTER 6
180 DAYS POST CERTIFICATION PROCEDURES FOR IMMINENT DANGEROUS PERSONS

Rule 8.6.1

Preparation of Petition

A petition must be prepared by County Counsel (pursuant to Welf. & Inst. Code, § 5114) and supported by affidavits describing in detail the behavior of the patient which presents information as provided in Welfare and Institutions Code section 5300.
(Adopted 7/1/2006)

Rule 8.6.2

Filing and Service of Petition

Copies of the petition for post certification treatment and the affidavits in support thereof must be served upon the person named in the petition on the same day as they are filed with the Mental Health Desk.
(Adopted 7/1/2006)

Rule 8.6.3

Affidavits

The court may receive the affidavits in evidence and may allow the affidavits to be read to the jury unless counsel for the person named in the petition subpoenas the treating professional person.
(Adopted 7/1/2006)

Rule 8.6.4

Right to Attorney and Jury Trial

The person named in the petition has the right to be represented by an attorney and a right to demand a jury trial. If the person named in the petition cannot afford an attorney, an attorney will be appointed.
(Adopted 7/1/2006)

CHAPTER 7
CERTIFICATION REVIEW HEARINGS

Rule 8.7.1

Compliance with Welfare and Institutions Code

Certification Review hearings will be held in compliance with Welfare and Institutions Code section 5256 et seq.
(Adopted 7/1/2006)

Rule 8.7.2

Procedures

The Office of Counselor in Mental Health is appointed to administer/or conduct certification review hearings in compliance with Welfare and Institutions Code section 5256 et seq. All persons involuntarily detained in psychiatric hospitals in San Diego County will have a certification review hearing when a 14-day certification has been filed. Hearings will be held for all persons regardless of the basis for certification. Hearings will be held within four days of the date on which the person was certified for intensive treatment, unless postponed by request of the person or his or her attorney or advocate. Hearings may be postponed 48 hours, or until the next regularly scheduled court date.

The following will apply to certification review hearings held in San Diego County:

A. Certification review hearings will be conducted at the facility where the person is receiving treatment;

B. Certification review hearings must be held in surroundings which allow for safety, quietness, and reasonable degree of confidentiality. A copy of the certification will be at the certification review hearing;

C. "Representative of the treating facility" means a registered nurse, psychiatrist, social worker or psychologist. A representative of the treating facility must be present at the hearing to give testimony and answer questions regarding the basis for continued detention and treatment;

D. Certification review hearings will be scheduled by the Office of Counselor in Mental Health unless the hearing is to be conducted by a certification review hearings stipulated in paragraph "J," below. Such hearing will be scheduled per agreement with the certification review hearing officer;

E. Friends, relatives and the patient's rights advocate or an attorney for the patient may be present and testify at the certification review hearing. Other persons will be admitted to the hearing at the discretion of the court commissioner or hearing officer;

F. Certification review hearings are not bound by rules of procedures of evidence applicable to judicial proceedings. All evidence which is relevant to establishing that the person is, or is not, as a result of a mental disorder, a danger to themselves or others, or gravely disabled may be admitted at the hearing and considered by the court commissioner or hearing officer;

G. The person will be assisted in preparation for the hearing by the patient's rights advocate or a retained attorney who will meet the patient prior to the certification review hearing, to discuss the commitment process and to assist the person in preparing for the certification review hearing or to answer questions or otherwise assist the person as is a appropriate;

H. The person certified has the right to make reasonable request for the attendance of facility employees who have knowledge of, or participated in, the certification decision;

I. Certification review hearings will be held for the person who has already requested a writ of habeas corpus hearing if the certification review hearing can be held on a date preceding the writ hearing. A certification review hearing will not be held where of habeas corpus hearing has been held;

J. Where the admission to the psychiatric facility has been ordered by the court pursuant to Welfare and Institution Code section 5200, the certification review hearing will be conducted by an attorney who has been assigned by the San Diego Superior Court as a Mental Health hearing officer.

(Adopted 7/1/2006)

CHAPTER 8
WRIT OF HABEAS CORPUS

Rule 8.8.1

Filing Petitions, Orders, Writs

Petitions for a writ of habeas corpus must be filed with the court clerk at the Mental Health Desk. The petition must be filed with an order granting writ of habeas corpus and a writ of habeas corpus. Sufficient petitions will be accepted for filing and file stamped immediately upon their presentation to the clerk.

(Adopted 7/1/2006)

Rule 8.8.2

Applications for Writ Seeking Release or Modification of Custody

A petition for a writ of habeas corpus, or for any other writ, seeking the release from or modification of the conditions of custody of one who is confined under the process of any court of this state or local penal institution, hospital, narcotics treatment facility, or other institution must be on a form approved by the Judicial Council, or on a printed form furnished or approved by the clerk of the court.

(Adopted 7/1/2006)

Rule 8.8.3

Hearing

Hearings on a writ will be heard in the Mental Health court, unless otherwise approved by the supervising judge.

(Adopted 7/1/2006)

Rule 8.8.4

Time of Hearing

A hearing on a writ will be scheduled at the time the writ is filed. Counsel for petitioner must notify the facility of the scheduled time for the hearing. Such notification will not replace the actual service of the writ requiring the patient to be present at the time set for the hearing. The hearing will be held within two court days of filing.
(Adopted 7/1/2006)

CHAPTER 9
WRIT OF HABEAS CORPUS PROCEDURES FOR MINORS ADMITTED TO PRIVATE PSYCHIATRIC FACILITY BY A PARENT

Rule 8.9.1

Applicability

Minors admitted to private Psychiatric facilities by a parent are entitled to habeas corpus relief in a manner consistent with the provisions of the LPS Act.

This procedure applies to any minor who is voluntarily admitted to a private psychiatric facility by a parent who has legal and physical custody of the minor. As used in this section "minor" means any person 10 through 17 years of age whose liberty is being restrained in a private (non-public) psychiatric treatment facility and the minor protests the restraint. For purpose of this section, writs of habeas corpus will be subject to the general provisions of Penal Code section 1473 et seq.

A. Right to Writ

1. Every minor 10 through 17 years of age, whose liberty is being restrained in a private psychiatric treatment facility may request a writ of habeas corpus to inquire into the cause of such restraint.

2. A writ of habeas corpus may be adjudicated to inquire into the basis for the restraint. The criteria are as follows:

a. The minor is not being detained for evaluation and treatment of any disorder.

b. Other causes which may be unlawful, as specifically stated in the petition.

Nothing in this section shall be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted or as precluding the use of any other remedies.
(Adopted 7/1/2006)

Rule 8.9.2

Procedures

A. Filing. When a minor requests release from any private psychiatric facility to any member of the facility treatment staff or the Patient Rights Advocate, that minor must promptly be provided with a "Petition for a Writ of Habeas Corpus by a Minor". Such form must be filed with the court clerk at the Mental Health Desk at 220 West Broadway within the next work day following completion of the petition.

B. Granting Writ. Upon a finding of probable cause, the following will occur:

1. The judge will endorse upon the petition the hour and date of the granting or denial of the writ, and a hearing will be held within two court days. When a writ is granted, it will be directed to the director of the facility restraining the minor, commanding the director to have the minor before the court at a time and place therein specified.

2. The court will appoint an attorney to represent the minor at the hearing.

C. Sick and Infirm Petitioner. The writ will be adjudicated in accordance with Penal Code section 1482.

D. Delivery of Writ. The writ will be delivered to the sheriff and will be served upon the facility director without delay.

E. Discharge or Remand. If the writ is discharged the minor must be released to the custody of their parents or other authority within a reasonable time, which shall be allowed to make adequate arrangements for the care of the minor. If the writ is remanded, the minor may continue to be restrained in accordance with any other pertinent laws and regulation.
(Adopted 7/1/2006)

CHAPTER 10
ADMINISTRATIVE PROCEDURE FOR ADMISSION OF MINORS FOR ACUTE CARE PSYCHIATRIC HOSPITAL

TREATMENT WHO ARE WARDS OR DEPENDENTS OF THE JUVENILE COURT

Rule 8.10.1

Applicability and Definitions

A. This policy is applicable upon the presentation of a dependent minor or ward to a psychiatric facility for the purpose of inpatient evaluation and treatment.

B. This policy is not applicable to non-dependent minors or non-declared wards.

C. Admissions of minors who are not subject to the jurisdiction of the Juvenile Court are governed by the provisions of the LPS Act, or other applicable law.

D. The reference to the term minor or minors as used in this policy refers to a minor child who has been adjudged a dependent or ward pursuant to the applicable provisions of the Welfare and Institutions Code.

E. Any reference in this policy requiring that notice be given requires notice to the following individuals: the minor's attorney, each parent's attorney, the parent, County Counsel, any court-appointed special advocate, and the office of the Patient Advocate.

F. The term "Department" means the Health and Human Services Agency if the minor is a dependent child, or the Probation Department if the minor is a ward.

(Adopted 7/1/2006)

Rule 8.10.2

Involuntary Hospitalization for the Initial 72-hour Period

A. Involuntary hospitalization of minors occurs only under the provisions of Welfare and Institutions Code section 5585 et seq. or 5350.

B. Pursuant to section 5585, and other applicable laws, the facility and its professional staff will determine whether the minor meets the criteria for admission for the initial 72-hour period.

C. Notice will be given by the Department indicating that the minor was presented to the facility for LPS evaluation and was either admitted to the facility, or was deemed not subject to admittance under provisions of section 5585 et seq. If the minor is admitted without the knowledge of the Department, the Department must, upon being informed to the minor's admission, undertake reasonable steps to provide notice required by this policy.

D. If the minor is admitted into the facility, the Department must, in addition to the notice referred to in paragraph C. above, contact the minor's attorney, in person or by phone, within six hours of admission. If the minor's attorney cannot be so contacted, or is otherwise unavailable, such notice shall be given to the office of the Patient Advocate.

E. Upon receiving the notice specified in paragraph D. above, the minor's attorney, or patient advocate when attorney is unavailable, must, within 24 hours, do the following:

1. Interview the minor at the facility;

2. Explain to the minor his/her rights, under the LPS Act, all in a manner to assist the minor to understand;

3. Counsel the minor regarding voluntary treatment, as set forth in Welfare and Institutions Code section 6552; and

4. Assure that all procedural requirements are fully met.

F. The Treatment and Aftercare recommendations required by statute must be provided to the Department who will then incorporate the same in the planning process for proper placement of the minor upon discharge from the facility. The Department must inform the Court of any delays or difficulties in receiving the Treatment and Aftercare recommendations from the facility.

G. If, after the expiration of the 72-hour period, the minor is not certified for the 14-day period described in Welfare and Institutions Code section 5250 et seq., and if the minor has not completed the voluntary application referred to in these rules, the minor will be discharged from the facility to the custody of the Department for further placement consistent with the procedures of the Welfare and Institutions Code and court policy.

(Adopted 7/1/2006)

Rule 8.10.3

Involuntary Hospitalization After the Initial 72-Hour Period

A. Any further involuntary hospitalization of minors after expiration of the initial 72-hour period will occur only under the provisions of the LPS Act.

B. It is the sole responsibility of the facility and its professional staff to determine whether the minor meets the criteria for further hospitalization under the provisions of the LPS Act.

C. The office of the Patient Advocate or the minor's attorney represents the interests of the minor during any Certification Review Hearing conducted under the LPS Act, in accordance with Welfare and Institutions Code sections 5255-5256.7.

D. At the expiration of the involuntary status under LPS or sooner if the minor is discharged from the facility, the minor must be returned to the custody of the Department for further placement consistent with the procedures of the Welfare and Institutions Code and court policy, unless the minor completes the voluntary application referred to in this policy.

(Adopted 7/1/2006)

Rule 8.10.4

Voluntary Hospitalization (Welf. & Inst. Code, § 6552)

A. The term "voluntary hospitalization" means the request, by application, of the minor to seek inpatient mental health services.

B. The term "by application" means the request of the minor to seek or receive inpatient mental health services.

C. The application must be a form in writing, and must include, at a minimum, the following:

1. An acknowledgment by the minor and his/her attorney that the minor understands the need to receive treatment, its probable duration and treatment regimen, and his/her desire to receive such treatment;

2. An acknowledgment that the minor has been made aware of his/her rights, the consequences of waiver, all in a manner the minor is able to understand.

D. An acknowledgment of the right to revoke the application and be discharged pursuant to rule 8.10.4, paragraph J, unless the minor may be involuntarily detained under sections 5585 or 5350.

E. The application, signed by the minor after advisement by the attorney or patient advocate, constitutes the only basis for the facility to accept the minor as a voluntary patient, pending the court order referred to in rule 8.10.4, paragraph F.

F. The duly executed application will be presented to the Juvenile Court ex parte, whereupon the court will make the findings pursuant to section 6552 that the minor be authorized to make a voluntary application. The finding will be based on the evidence presented, but must include at a minimum the following:

1. The voluntary application signed by the minor, together with the attorney certification signed by minor's counsel.

2. A declaration or affidavit by the attending therapist that the minor suffers from a mental disorder; the facility is qualified to treat the disorder; and there is no less restrictive facility available or appropriate which may better meet the needs of the minor.

3. A medication plan that sets forth the category of medications, if any, to be administered to the minor.

G. Upon making the findings referred to in paragraph F, the Juvenile Court will issue an order authorizing the voluntary admission of the minor for treatment. Such an order must be served on all counsel and parties. Such an order shall be construed solely as an authorization for treatment pursuant to section 6552 and does not constitute a court-ordered commitment. Upon being served, any counsel or party may schedule a special hearing for purposes of objecting to the court order. The special hearing must be heard within three (3) judicial days.

H. A court order authorizing the voluntary admission of a minor for treatment does not deprive the minor of the right to revoke the voluntary application.

I. A revocation of the voluntary application must be communicated immediately to the Department who will calendar a special hearing for the next court day and notify all counsel and parties.

J. The minor must be released to the Department after the court hearing referred to in paragraph I, unless the provisions of the LPS Act are satisfied.

(Adopted 7/1/2006)

CHAPTER 11
ADMINISTRATIVE PROCEDURE FOR ADMISSION OF MINORS WHO ARE NOT DEPENDENTS OR WARDS OF THE JUVENILE COURT FOR ACUTE CARE PUBLIC PSYCHIATRIC HOSPITALS AND PRIVATE FACILITIES UNDER CONTRACT WITH THE COUNTY

("ROGER'S" HEARINGS)

Rule 8.11.1

Applicability

This procedure applies to only those admissions in which the responsible person (other than a public official) seeks to admit a minor 14 through 17 years of age for evaluation or treatment of a mental disorder to a public facility and private inpatient facilities under contract with the County (i.e.: County Psychiatric Hospital or UCSD Medical Center). Admissions or detentions not referenced in these procedures will not be affected by these procedures, including, but not limited to the following: Welfare and Institutions Code section 5150 et seq. (Detention of Mentally Disordered Persons for Evaluations and Treatment), 5326.75 et seq. (Court Ordered Evaluation for Mentally Disordered Persons), 5225 et seq. (Court Ordered Evaluation for Persons Impaired by Chronic Alcoholism), 5250 et seq. (Certification for Intensive Treatment), 5260 et seq. (Additional Intensive Treatment of Suicidal Persons), 5300 et seq. (Post Certification Procedures for Dangerous Persons), or 5350 et seq. (Placement by Conservator for Gravely Disabled Persons). This procedure does not affect laws pertaining to what agency or individual has the right to consent to mental health or psychiatric treatment on behalf of a minor.
(Adopted 7/1/2006)

Rule 8.11.2

Definitions

A. "Hearing Officer" means a designee of the Mental Health or Juvenile Division of the court, and includes attorneys appointed to conduct Capacity hearings (see rule 4.307) or professional staff from the Office of the Counselor in Mental Health who are appointed as hearing officers as referenced in Welfare and Institutions Code section 5334, subdivision (c).

B. "Facility" means any public or private facility under contract to provide services paid by County Mental Health, or any hospital licensed to provide acute care inpatient psychiatric treatment.

C. "Minor" means: any person who is age 14 through 17 years of age who is not emancipated.

D. "Responsible person" means a parent, guardian, or other person having custody of the minor.

E. "Patient Advocate" means the designated Title IX patient rights advocate who will assure that minors are informed of their right to pre-admission hearings and assure that minors who waive the right to a hearing have done so freely, voluntary and intelligently.

F. "Work day(s)" means judicial days (or a day when the court is open).

G. "Public facility" means any facility owned or operated by the State of California or the County of San Diego.

H. "Professional person" means a psychiatrist, psychologist, social worker with a master degree, licensed marriage, family and child counselor, or registered nurse.
(Adopted 7/1/2006)

Rule 8.11.3

Initiating Hospitalization

A. When it is determined by an appropriate mental health professional that a minor is in need of psychiatric inpatient services, the responsible person, or staff representing the proposed treatment facility, must, prior to any admission to a facility initiate these procedures: (1) obtain a physician's affidavit; and (2) contact the patient advocate who will either in person or by telephone, inform the minor of the right to a hearing and determine whether the minor will freely, voluntarily and intelligently waive the right to a hearing, and may inform the minor of other patient rights;

B. The "Physician's Affidavit" must include the following information:

1. Whether the minor suffers from a mental disorder, and if so, its nature;

2. Whether the proposed treatment program, which requires 24-hour hospital care, is reasonably expected to ameliorate the mental disorder;

3. Whether the proposed facility in which the minor is to be placed is the least restrictive and most appropriate and available facility which can fulfill objectives of treatment; and

4. Whether the treatment facility is in the minor's home community or that the benefit of placement outside the home community outweighs the detriment of separating the minor from the home community.

C. When a minor has been involuntary detained at a facility under other provisions of law, and the responsible person desires to voluntarily admit the minor, the facility staff may assist in initiating voluntary admission. For the purposes of this procedure the voluntary admission will be treated as new admission to the facility regardless of prior involvement of the minor with the facility.

D. The physician's affidavit must be available at the facility when the patient advocate determines whether the minor is protesting the admission, and must be available to the hearing officer at the hearing.

E. The professional person testifying at the hearing may be a person other than the person signing the "Physician's Affidavit" who is familiar with the treatment needs of the minor and available and/or potential resources.

F. When the minor protests the admission at the time of the evaluation for admission, or prior to the time of the patient advocate seeing the minor to ascertain whether the minor is protesting the admission, the procedures described in rule 8.11.5 apply.
(Adopted 7/1/2006)

Rule 8.11.4

Procedure for a Non-Protesting Minor who Wishes to Waive the Right to a Hearing

A. Before the minor waives the right to a hearing, the Patient Advocate must contact the minor by telephone or in person to ascertain whether the minor is protesting the admission and to provide notification of the right to a hearing. The Patient Advocate must certify that the minor freely, voluntarily, and intelligently waived the right to a hearing. The Patient Advocate and the minor must sign the approved "Waiver of Hearing" form (hereinafter referred to as "waiver"), except where the waiver is obtained telephonically, in which case the waiver on page 2 of the waiver will suffice. The signed waiver allows admission to the facility, providing other necessary authorization(s) (e.g., permission of the responsible person or legally authorized designee) is/are also available. The waiver must remain in the minor's record at the treating facility. A copy of the signed waiver and the physician's affidavit must be given to the facility to which the minor is to be admitted.

B. When the waiver has been signed by a person other than the Patient Advocate due to telephone authorization, on the next work day following admission of the minor, the Patient Advocate must personally interview the minor and review the waiver. If in the opinion of the Patient Advocate, the minor is not freely, voluntarily and intelligently waiving the right to the hearing, or if the minor is now protesting the admission and requesting a hearing, the Patient Advocate must again advise the minor of the right to a hearing. A hearing must be held within five work days from the date the minor requests a hearing unless an agreement has been reached pursuant to rule 8.11.5H.

C. If, in the opinion of the Patient Advocate, the minor is not freely, voluntarily, and intelligently waiving the right to the hearing, or if the minor is protesting the admission and is requesting a hearing, the Patient Advocate must notify facility staff of the need for a hearing, and the facility staff or responsible person must arrange for a hearing through the Office of Counselor in Mental Health. A hearing will be held within five work days from the date the Patient Advocate informs the facility of the need for a hearing (unless an agreement has been reached pursuant to rule 8.11.5H.

D. In situations where a minor was admitted as an inpatient to a facility in accordance with the provisions of this procedure and waived the right to a hearing and subsequently indicates to the Patient Advocate, patient's counsel, any member of the treatment staff, or the responsible person a desire to have a hearing and/or be released from the facility, then a hearing will be conducted by a hearing officer within five work days from the time of the request for hearing being filed with the Office of Counselor in Mental Health, unless agreement has been reached pursuant to rule 8.11.5H.
(Adopted 7/1/2006)

Rule 8.11.5

Protesting Minor

A. When the minor protests the admission and requests a hearing, the facility staff or Patient Advocate must promptly telephone the Office of Counselor in Mental Health and request a hearing;

B. No admission will be made for a protesting minor under these procedures until a hearing is held or the minor waives the right to a hearing. It is the intent of these procedures that hearings be held on a pre-admission basis, unless the minor has been previously admitted under other provisions of law;

C. An attorney or the Patient Advocate will be appointed to represent the minor at all hearings for admission to a hospital for acute psychiatric treatment;

D. Upon receipt of the request for a hearing, the Office of Counselor in Mental Health will:

1. Set a date for a hearing which shall be scheduled no later than five work days after the request for hearing has been received unless agreement has been reached pursuant to rule 8.11.5H; and

2. Give notice of the hearing to the following by telephone:

a. The attorney or the Patient Advocate;

b. The proposed facility;

E. The proposed facility or responsible person must notify the minor of the hearing;

F. The proposed facility must make reasonable effort to notify the responsible person and/or parent(s) of the hearing;

G. The minor's counsel and the hearing officer may review all clinical and medical records in accord with the Welfare and Institutions Code sections 5328, subdivision (j), 5328, subdivision (m), and 5540-5546;

H. Nothing herein precludes the hearing from being held more than five work days from the date of the request, for good cause, and upon agreement of the hearing officer and attorney or the Patient Advocate;

I. At the hearing, the attorney or Patient Advocate represents the minor. The minor and the attorney or Patient Advocate have the right to:

1. Review the Physician's affidavit;
2. Be present at the hearing;
3. Present evidence and call witnesses;
4. Confront and cross-examine witnesses; and
5. Waive the minor's right to be present at the hearing;

J. The hearing will be held in a place convenient to the parties and in an informal setting. The public will be excluded from the hearing, subject to exceptions made at the discretion of the hearing officer, inclusive of family members. Hearings will be electronically recorded, and all records will be held as confidential as provided in Welfare and Institutions Code section 5328;

K. Hearings will be conducted in an informal manner and the hearing officer may consider all evidence of probative value irrespective of whether it complies with formal rules evidence. The decision of the hearing officer will be based on the preponderance of evidence. All of the following will be established at the hearing:

1. The minor suffers from a mental disorder;
2. The proposed treatment program requires 24-hour hospital care and is reasonably expected to ameliorate the mental disorder;
3. The proposed facility in which the minor is to be placed is the least restrictive and most appropriate facility which can fulfill the objectives of treatment; and
4. If the treatment program is not in the minor's home community, the benefit of placement outside the home community outweighs the detriment of separating the minor from the home community;

L. The hearing officer will make findings in writing to support the decision. Following the hearing, the hearing officer will issue an order authorizing admission to the recommended or alternate facility or an order denying admission. Copies of the findings and order will be provided to all the following:

1. The minor;
2. The attorney or Patient Advocate;
3. The responsible person upon request; and
4. The proposed facility.

Whenever possible a mental health professional who will participate in treatment in the proposed facility or a professional person who has participated in the minor's treatment should be available to present testimony at the hearing;

M. Nothing in these procedures requires a facility to accept a minor;

N. The minor may be admitted to the authorized facility within 15 calendar days following the hearing.

(Adopted 7/1/2006)

Rule 8.11.6

Facility Review

Facilities accepting minors under this procedure must provide periodic review of the minor's treatment program to assure that continued treatment is required. Documentation of such reviews must appear in the minor's records at least monthly.

(Adopted 7/1/2006)

Rule 8.11.7

Confidentiality

Confidentiality must be in accord with Welfare and Institutions Code section 5328 et seq. The hearing officer will be considered a "court" as referenced in Welfare and Institutions Code section 5328, subdivision (f).

(Adopted 7/1/2006)

Rule 8.11.8

Records

Records must be maintained as provided for by law.

(Adopted 7/1/2006)

Rule 8.11.9

Writ of Habeas Corpus

If admission is authorized, the attorney or Patient Advocate must advise the minor of the right to a writ of habeas corpus hearing. If a request for release is filed, the writ of habeas corpus hearing will be in the Mental Health Division.

(Adopted 7/1/2006)

Rule 8.11.10

Filing a Writ of Habeas Corpus

Nothing herein deprives the minor of the right to seek a writ of habeas corpus.
(Adopted 7/1/2006)

CHAPTER 12
APPOINTED COUNSEL, FEES, COSTS

Rule 8.12.1

Representation of Patients in Mental Health Court.

If the patient has not retained private counsel, the Public Defender is appointed to represent patients in the Mental Health Court in accordance with the authorization of the Board of Supervisors. When the Public Defender has a conflict in representing a patient, then the Alternate Public Defender will be appointed. If the Alternate Public Defender cannot represent the patient, then the Private Conflict Counsel will designate counsel to represent the patient. If Private Conflict Counsel is unable to appoint counsel, then the Mental Health judge will appoint counsel.
(Adopted 7/1/2006)

Rule 8.12.2

Private Conflict Counsel

A. Services Subject to Compensation. In any case where counsel has been appointed to represent a person in Mental Health Court proceedings, and where payment of attorney fees will be made by the County of San Diego through Private Conflict Counsel, the determination of which attorney services are to be compensated, and the amount of reimbursement, will be made by the Private Conflict Counsel, consistent with the policies and procedures of the Private Conflict Counsel Manual effective at the time such services are rendered.

B. Costs Subject to Reimbursement. In those cases where costs incurred by appointed counsel, including mileage, will be reimbursed by the County of San Diego through Private Conflict Counsel, the determination of which costs are subject to reimbursement, and the amount of reimbursement, will be made by Private Conflict Counsel.

C. Notice of Termination of Contract. Where an attorney appointed to represent a patient in the Mental Health Court pursuant to policies and procedures of Private Conflict Counsel discontinues providing such services, notice must immediately be served by such attorney on the Public Conservator and Private Conflict Counsel. Proof of service and a copy of the notice must be filed at the Mental Health Desk and the Office of the Public Defender.
(Adopted 7/1/2006)

Rule 8.12.3

Patient Reimbursement of Appointed Counsel's Fees and Costs

A. Determination. In those cases where counsel has been appointed to represent the patient, and it is believed that the patient has sufficient funds to pay attorneys' fees and costs, the Mental Health Court judge, upon a timely request by counsel and notice to the conservatee, will determine which legal services and costs, and the amounts, are to be reimbursed by the patient.

B. Stipulation. Reimbursement to the County for fees and costs can be ordered based on the stipulation of the parties.

C. Procedural Requirements - Notice to Patient

1. Payment of attorney fees and reimbursement for attorney costs will not be ordered paid by conservatee unless the conservatee, and the conservator for the estate or the conservatee's personal representative, if any, have been notified in writing of the possibility that fees and costs may be ordered to be paid by the conservatee.

2. It is the duty of the office of the Public Conservator, or such agency or individual as may file the initial petition for permanent conservatorship, to include on the face thereof written notice of the possibility that the conservatee's estate may be held liable for the payment of attorney fees and reimbursement of cost incurred for services rendered relative to any mental health law proceedings that takes place after the filing of said petition and during the pendency of the conservatorship.

D. Request for Conservatee to Pay Fees and Costs

1. Counsel appointed for the conservatee may submit a request to the Mental Health Court judge that the conservatee pay legal fees and/or reimburse the counsel for costs. Appointed counsel (a) may make the request in open court at the time of the subject hearing in the presence of the conservatee; or (b) may submit a separate noticed petition for same, and calendar a hearing with proper notification to the conservatee and the conservator in accordance with the established notice procedures as stated in "Notices" of these rules. In the notice, counsel for the conservatee must specify the amount of the attorney fees and costs being requested and sufficient details to show the reasonableness of the requests.

2. Counsel appointed for the conservatee has the burden of proving: (a) that the conservatee has sufficient funds to pay the requested amount of attorney fees and costs, and (b) the reasonableness and accuracy of the amounts requested.

3. In ruling on the request, the Mental Health Court judge will: (a) determine whether the conservatee has sufficient funds, and (b) set the amount of fees to be paid and the amount of costs to be reimbursed. The judge will consider the amount customarily awarded in routine cases.

(Adopted 7/1/2006)